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MEETING

STATE OF CALIFORNIA

INTEGRATED WASTE MANAGEMENT BOARD

PERMITTING AND ENFORCEMENT COMMITTEE

JOE SERNA, JR., CALEPA BUILDING

1001 I STREET

2ND FLOOR

SIERRA HEARING ROOM

SACRAMENTO, CALIFORNIA

MONDAY, DECEMBER 6, 2004

10:00 A.M.

JAMES F. PETERS, CSR, RPR
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMITTEE MEMBERS

Ms. Rosalie Mulé, Chairperson

Ms. Rosario Marin

Mr. Michael Paparian

STAFF

Mr. Mark Leary, Executive Director

Ms. Julie Nauman, Chief Deputy Director

Ms. Marie Carter, Chief Counsel

Mr. Howard Levenson, Deputy Director

Mr. Michael Bledsoe, Staff Counsel

Mr. Richard Castle

Mr. Mark de Bie, Branch Manager, Permitting and Inspection

Mr. Chris Deidrick

Ms. Judy Friedman

Mr. Tad Gebrehawariat

Mr. Jeff Hackett

Mr. Brian Larimore

Ms. Mary Madison-Johnson, Supervisor, Permitting and
Inspection Branch

Mr. Wes Mindermann, Supervisor, Solid Waste Cleanup
Programs Section

Ms. Beatrice Poroli

Mr. Scott Walker, Branch Manager, Remedial, Closure and
Technical Services

Ms. Erica Weber

APPEARANCES CONTINUED

ALSO PRESENT

Ms. Yvette Agredano, SWANA

Mr. Peter Anderson, Center For Competitive Waste Industry

Mr. John Benemann, Institute for Environmental Management

Mr. John Boucher

Mr. Tim Cass, San Diego County Water Authority

Mr. Brent Cronk, Merced County Local County Enforcement
Agency

Mr. Everett Delano, Riverwatch

Senator Denise Ducheny

Mr. Evan Edgar, California Refuse Removal Council

Mr. Nancy Eort, Kern County Waste Management Department

Mr. Bill Hutton, Gregory Canyon Landfill

Mr. George Larson, Waste Management

Mr. Gary Liss, Gary Liss & Associates

Mr. Rod Lorang, San Diego County Counsel

Mr. Bill Magavern, Sierra Club, California

Ms. Kerry McNeal, San Diego County Local Enforcement
Agency

Mr. Joe Mello, State Water Resources Control Board

Mr. Jack Miller, San Deigo County Local Enforcement Agency

Mr. Mike Mohajer, Los Angeles County Waste Management Task
Force

Mr. Guss Pennell, City of Oceanside Water Utilities
Department

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APPEARANCES CONTINUED

ALSO PRESENT

Mr. Cheryl Reiff, Sierra Club, San Diego Chapter

Mr. David Roberti, Bioenergy Producers Association

Mr. Walter Rusinek, Procopio

Mr. Scott Smithline, Californians Against Waste

Ms. Toni Stein, Independent Researcher

Mr. Michael Theroux, Theroux Environmental

Ms. Lenore Volturno, Pala Band of Mission Indians

Mr. Joyce Ward, Riverwatch

Ms. Joy Williams, Environmental Health Coalition

Ms. Monica Wilson, Global Alliance for Incinerator
Alternatives

Mr. Ramin Yazdani, Yolo County Planning & Public Works
Department

Mr. Mike Zischke, Morrison & Foerster

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1 PROCEEDINGS

2 CHAIRPERSON MULÉ: Good morning, everyone. I
3 would like to welcome you to the December 6th meeting of
4 the Permitting and Enforcement Committee.

5 There are agendas on the back table. And if
6 anyone would like to speak on any of the items at today's
7 meeting, I would request that you fill one out, bring it
8 up here to Ms. Duclo. And that would give you an
9 opportunity to address our committee.

10 Also, I'm going to ask everyone to turn off
11 their cell phones and pagers, please.

12 Thank you very much.

13 Donnell, would you please call the role.

14 SECRETARY DUCLO: Absolutely.

15 Members Marin?

16 COMMITTEE MEMBER MARIN: Present.

17 SECRETARY DUCLO: Paparian?

18 COMMITTEE MEMBER PAPARIAN: Here.

19 SECRETARY DUCLO: Chair Mulé?

20 CHAIRPERSON MULÉ: Here.

21 Thank you.

22 Committee, are there any ex partes?

23 Ms. Marin?

24 COMMITTEE MEMBER MARIN: No. I'm up to date.

25 CHAIRPERSON MULÉ: Mr. Paparian?

1 COMMITTEE MEMBER PAPARIAN: I said hello to
2 Senator and former Board Member David Roberti.

3 And then, Madam Chair, are you going to read some
4 of the written ex partes we've received recently?

5 CHAIRPERSON MULÉ: Yes. The way I'm going to
6 handle the ex partes is, we did log in and disclose all
7 the ex partes with the exception of about 15, which I will
8 now read into the record if that's okay with you. Okay?
9 That's what I'll do right now.

10 I do have several ex partes that I would like to
11 read into the record. Lou Ballou, Clif Caulfield, Lorri
12 Culver, Leo and Kristina Duarte, Mike Gotch, Jackie
13 Heynemah, Mick and Geri Hill, Lori Isakson, Peter
14 Krupczak, John and Jule Ljubenkov, Howard Sanson, Marilyn
15 Schweibold, Nadine Scott, Wallace Tucker, Claudia Watson,
16 Le and Richard Werthmuller, Harold White, BJ Wilson, John
17 Watson.

18 Do you have any other ones that you'd like to
19 add?

20 COMMITTEE MEMBER PAPARIAN: Yeah, I have two
21 additional ones, a Mr. And Mrs. H. Heyming H-e-y-m-i-n-g,
22 and also Ricardo Dence D-e-n-c-e.

23 Okay. Thank you, Mr. Paparian. I appreciate
24 that.

25 So we are all up to date on our ex partes.

1 We do have quite a full agenda today, as well as
2 a Committee workshop this afternoon. So we will go ahead
3 and get started with Mr. Levenson's Deputy Director
4 Report.

5 Mr. Levenson.

6 DEPUTY DIRECTOR LEVENSON: Thank you, Madam
7 Chair. Good morning, Committee members. Howard Levenson
8 with the Permitting and Enforcement Division.

9 I have a very short Deputy Director's Report in
10 keeping with how I'll try to approach most of the items on
11 today's agenda.

12 First of all, I just want to mention that on
13 November 29th, we conducted a workshop on broad training
14 issues related to LEA and operator training and
15 certification. And we will be coming back to the
16 Committee with an agenda item some couple months from now
17 to talk about that in more detail with you.

18 I want to knowledge two staff people, because the
19 staff is what makes this place work and happen. First of
20 all, Laura Niles. And I don't know if Laura -- too
21 embarrassed to come down and be in the audience. But
22 Laura used to be in the Permitting and Enforcement
23 Division. She started working for the Board in 1989 with
24 the old recycling hot line and then in '94 moved on to the
25 Enforcement Division doing facility inspections. She's

1 recently moved over to our Special Waste Division.

2 And I just want to acknowledge all the work that
3 she's done over the years. She conducted -- or dealt with
4 over 30 jurisdictions including some of the most
5 complicated ones. In between all of that she served in
6 the Air Force for one year with Desert Storm. And she
7 just did an awful lot of good work for the P&E Division.
8 I'm sure she'll continue to do that in Special Waste.

9 Also want to mention Brad Williams from our 2136
10 cleanup program. And Chairman Marin had received a letter
11 last month from the San Benito County Health and Human
12 Service Agency commending Brad for his work on the new
13 Idria Mine facility remediation. And there's lots of
14 quotes I could give you. But for brevity, Brad did a
15 great job on that, as he always does. I just want to
16 acknowledge him.

17 And, lastly, I want to let you know that we
18 are -- as the be enforcement agency in the Stockton area,
19 we issued a cease and desist order just last week to A+
20 Materials Recycling in Stockton to immediately cease
21 accepting contaminated green waste at its green material
22 composting site and to remove the existing pile of
23 material by the end of this month. So we've taken action
24 on that site, and we'll monitor that and then report back
25 to you in terms of compliance.

1 Unless there's any questions, that's the end of
2 my report for today.

3 CHAIRPERSON MULÉ: Any questions?

4 No? Okay.

5 Okay. Thank you.

6 Let's move on then. Item B, consideration of the
7 grant awards for the Farm and Ranch Solid Waste Cleanup
8 and Abatement Grant Program Fiscal Year '04-'05.

9 Howard.

10 DEPUTY DIRECTOR LEVENSON: Okay. And just as a
11 general -- generalization for today, with the exception of
12 a couple of items, we're going to try make these
13 presentations extremely quick, unless you have questions
14 or there's some comments that we need to address from the
15 audience.

16 CHAIRPERSON MULÉ: Thank you.

17 DEPUTY DIRECTOR LEVENSON: And since you've given
18 the title, I will just turn this over to Mr. Wes
19 Mindermann.

20 SOLID WASTE CLEANUP PROGRAMS SECTION SUPERVISOR

21 MINDERMAN: Good morning, Madam Chair and members of the
22 Committee.

23 Item B before you this morning is for
24 consideration of three applications under the Farm and
25 Ranch Solid Waste Cleanup Program, totaling approximately

1 \$170,000.

2 Staff have reviewed the applications and scored
3 them and are recommending approval today.

4 COMMITTEE MEMBER MARIN: Move approval.

5 CHAIRPERSON MULÉ: I hear a motion to approve.
6 Second?

7 COMMITTEE MEMBER PAPARIAN: I second.

8 I have a quick question if that's all right.

9 CHAIRPERSON MULE: Okay.

10 COMMITTEE MEMBER PAPARIAN: I just -- the San
11 Joaquin sites -- actually all the sites on this one and
12 the next item just -- if we could just get some assurance
13 that attempts will be made to find the responsible parties
14 and turn them over to local prosecutors for littering or
15 whatever the violation might be.

16 SOLID WASTE CLEANUP PROGRAMS SECTION SUPERVISOR
17 MINDERMANN: Absolutely, Mr. Paparian. We'll be working
18 with the grantees to ensure that, if we do find any
19 responsible parties, they will be turned over to the
20 appropriate authorities.

21 COMMITTEE MEMBER MARIN: If I may. That is
22 traditionally done. Isn't that a course of action we take
23 on all of them?

24 SOLID WASTE CLEANUP PROGRAMS SECTION SUPERVISOR
25 MINDERMANN: Yes, we typically work with code enforcement

1 or the local enforcement agencies to see who we can find,
2 to the best of our ability.

3 CHAIRPERSON MULÉ: Thank you, Wes.

4 So I hear a second?

5 COMMITTEE MEMBER PAPARIAN: Yes.

6 CHAIRPERSON MULÉ: Okay. We have a motion to
7 approve from Board Member Marin; second, Mr. Paparian.

8 Please call the roll.

9 SECRETARY DUCLO: Board Member Marin?

10 COMMITTEE MEMBER MARIN: Aye.

11 SECRETARY DUCLO: Paparian?

12 COMMITTEE MEMBER PAPARIAN: Aye.

13 SECRETARY DUCLO: Chair Mulé?

14 CHAIRPERSON MULÉ: Aye.

15 Motion passes.

16 And this can go on consent?

17 DEPUTY DIRECTOR LEVENSON: Fiscal consent.

18 CHAIRPERSON MULÉ: Fiscal consent. Thank you.

19 Okay. Next item, Howard.

20 DEPUTY DIRECTOR LEVENSON: Wes will also present
21 that.

22 This is Item C, consideration of new projects for
23 the Solid Waste Disposal and Codisposal Site Cleanup
24 Program.

25 SOLID WASTE CLEANUP PROGRAMS SECTION SUPERVISOR

1 MINDERMAN: Thank you again. We have two proposed
2 Board-managed cleanups for your consideration this
3 morning, totaling \$300,000.

4 Both projects have been reviewed by staff, and we
5 feel they meet the criteria for a waiver of cost recovery
6 for the reasons outlined in the item. And we're
7 recommending that the Board approve these sites under the
8 Solid Waste Disposal and Codisposal Site Cleanup Program.

9 Funding would come from existing funds and
10 existing contracts. So previously encumbered funds and
11 our contracts.

12 So with that, we're recommending approval.

13 CHAIRPERSON MULÉ: Okay. Do I hear a motion to
14 approve or questions first?

15 COMMITTEE MEMBER PAPARIAN: No, I'll move
16 Resolution 2004-303.

17 COMMITTEE MEMBER MARIN: Second.

18 CHAIRPERSON MULÉ: Moved by Mr. Paparian,
19 seconded by Ms. Marin.

20 Could you substitute the previous roll?

21 SECRETARY DUCLO: Yes.

22 CHAIRPERSON MULÉ: And this also will go on
23 fiscal consent.

24 Thank you.

25 Next item is Item 22.

1 DEPUTY DIRECTOR LEVENSON: Okay. Item D, Board
2 Item 22, is discussion and public hearing on the proposed
3 amendment of transfer processing regulations to address
4 conversion technology operations.

5 And Judy Friedman -- okay, Brian -- Brian
6 Larimore is going to present that item.

7 MR. LARIMORE: Good morning, Chair, members. I'm
8 Brian Larimore and I work in the Waste Prevention and
9 Market Development Division's Organic Materials Management
10 Section.

11 The Board directed staff at its February 19th,
12 2002, meeting to initiate a rule making to revise the
13 transfer station processing operations and facilities
14 regulatory requirements to specify the conversion
15 technologies that handle solid waste residuals as feed
16 stock whether or not the technologies are specifically
17 included in the statutory definition of transformation are
18 subject to these regulations.

19 One of the purposes of the proposed regulations
20 is to provide some regulatory clarity about the permitting
21 and operational requirements that would apply to these
22 facilities.

23 On October 22nd, 2004, the Office of
24 Administrative Law publicly noticed the proposed
25 regulations on many of the transfer processing regulations

1 to address conversion technology operations. This
2 initiated the 45-day public comment period which closes
3 today.

4 The discussion of this item will constitute the
5 public hearing for this rule making, and is being held to
6 allow oral and written comments to be submitted.

7 The Committee is not being asked to take action
8 concerning changes to the proposed regulations as a part
9 of this hearing. Based on comments received in Committee
10 direction, staff were revise the proposed regulations and
11 present them for consideration at the Committee's February
12 meeting.

13 Prior to the formal rule-making process several
14 steps were taken to ensure participation by interested
15 parties. An initial workshop was held in January 2002 to
16 seek stakeholder guidance on regulation of conversion
17 technology sites. A focus group of representatives from
18 industry, the Board, environmental organizations and LEAs
19 was formed in early 2003 and teleconferences were held.

20 Regulations were drafted and circulated at our
21 workshop held August 1st, 2003. Approximately forty
22 stakeholders attended the workshop. Board staff has
23 received written comments from stakeholders and
24 communicated by phone and E-mail.

25 The issues brought forward by stakeholders

1 include:

2 The preference by some to be considered a
3 manufacturer rather than a recycling center. This would
4 exclude CT sites from these regulations even when the
5 three-part test was not passed.

6 Requests that permit tonnages be higher for CT
7 sites than transfer processing sites.

8 Also issues outside the scope of the regulations
9 including whether diversion credits should be allowed for
10 material diverted to a conversion technology site.

11 And whether conversion technology sites should be
12 required to remove recyclables prior to conversion.

13 The proposed language requires that all
14 recyclable materials and marketable green waste and
15 compostable materials have been removed prior to the
16 conversion process.

17 The owner or operator of the facility shall
18 certify that these materials will be recycled or
19 composted. This language was included for the sake of
20 consistency and was taken from PRC 40017, the most recent
21 statute addressing the removal of recyclables from a
22 conversion technology facility.

23 Some stakeholders believe the proposed language
24 would be cost prohibitive, requiring conversion technology
25 facilities to remove more recyclables from the feed stock

1 prior to the conversion process than currently required in
2 their jurisdiction.

3 Staff received additional comments by E-mail
4 during the last couple of days -- I'm sure they're still
5 arriving -- opposing promulgation of the proposed
6 regulations. The main points of the comments include
7 delaying the regulations until legislative questions are
8 resolved. For instance, the definitions and placement in
9 the solid waste hierarchy.

10 Board direction and stakeholder input has been
11 considered in drafting of these regulations. The 45-day
12 public comment period and any additional comment periods
13 will allow for further stakeholder input. But some in the
14 audience today may also wish to expand on these and other
15 issues at the conclusion of this presentation.

16 The current draft of the regulations is
17 Attachment 1 of this item.

18 To summarize the proposed regulations:

19 Conversion technology operations in the
20 facilities will be regulated under the transfer processing
21 operations and facilities regulatory requirements as
22 directed by the Board at its February 2002 meeting.

23 Conversion technology sites will be slotted into
24 the same tiers and be subject to the same minimum
25 standards as transfer processing sites.

1 The regulations would apply to the handling of
2 solid waste prior to -- but not actual conversion
3 processes.

4 Also the proposed regulations would define
5 conversion technology, which includes catalytic cracking,
6 distillation, gasification, hydrolysis, and pyrolysis.
7 And it does not include incineration, biomass conversion,
8 or composting, including anaerobic digestion. Require the
9 removal of recyclable materials and marketable green waste
10 compostable materials prior to conversion.

11 The Board at its April 16th, 2002, meeting
12 approved a policy or recommendation requiring the removal
13 of recyclable materials.

14 Excludes sites that passed the three-part test.
15 Exclude very small conversion technology activities
16 conducted in a closed environment. Not require a permit
17 for a conversion technology research operation but an EA
18 notification, with a maximum tonnage of 15 tons per day.

19 Change the name of the full permit to Conversion
20 Technology Facility Permit for facilities subject to a
21 full permit.

22 It is important to keep in mind that conversion
23 technology operations will also need air permits and waste
24 discharge permits and need to meet other state and local
25 requirements.

1 If these regulations are not promulgated,
2 conversion technology operations would still be regulated
3 by the Board but on a case-by-case basis under the
4 transfer processing regulations.

5 In addition, only gasification operations will be
6 required to remove recyclables and marketable green waste
7 compostable materials as required by AB 2770.

8 I'd be happy to answer any questions at this
9 time.

10 CHAIRPERSON MULÉ: Thank you.

11 I think what we're going -- the way we're going
12 to handle this is -- we do have several speakers that have
13 requested to speak. And so what I'm going to do is, first
14 of all, indicate that we have received letters from
15 Bioenergy Producers Association, Waste To Energy, Theroux
16 Environmental, Mr. Michael Mohajer, and SWANA.

17 And as I a mentioned at the beginning of the
18 meeting, we do have a full agenda today. So I'm going to
19 ask each speaker, if it's possible, to please limit your
20 comments to three minutes or less, just in the interests
21 so we can get everything on the record.

22 Also, that if you are going to say something that
23 was already said by a previous speaker, you can come up if
24 you'd like and just say, "I agree with the previous
25 speaker," if you want to be on the record. Or you can

1 waive your time. Either is fine.

2 Our first speaker is -- and we're going to hold
3 questions till after we hear the speakers. Okay?

4 Thank you.

5 Our first speaker is David Roberti.

6 Senator.

7 SENATOR ROBERTI: Where shall I speak from?

8 CHAIRPERSON MULÉ: Over here, sir.

9 SENATOR ROBERTI: Thank you very much, Madam
10 Chair. Nice to meet you once again. Mr. Paparian.

11 And congratulations, Ms. Marin, on being Chair of
12 this very important agency.

13 Within the last month, a group of bioenergy
14 producers or conversion technology industries have formed.
15 And they have formed because these regulations and what
16 this Board does is life and death to them. And they have
17 formed in order to put their case forward.

18 On the sheet that I was asked to sign, I was
19 asked to sign whether they are in -- I'm in favor or
20 opposed. Since there was nothing -- my option was to say
21 I'm opposed to the regulations. That is only because that
22 was the only option I was given. I think the staff is
23 doing an excellent job in trying to work in an area which
24 is difficult, because the original bill, AB 939, never
25 contemplated conversion technology. And so we are trying

1 to enact regulations in an area that at that time was a
2 never never land because it did not exist.

3 Nevertheless, I was pleased with the comments
4 that no action is going to be taken, because we can't take
5 action in an area where there is not statutory reform
6 bringing up to date what we're trying to do in the light
7 of regulations covering a new industry in a statute that
8 was passed over 10 years ago, 12 years ago.

9 But there are some inconsistencies and problems.
10 First let me review.

11 Both at the federal and the state level the
12 interest is to move to promote conversion technologies.
13 The federal government has passed tax benefits. This body
14 has passed Resolution 2001-134, which I was present when
15 it passed, which indicated among other things that we have
16 to work with the industry in order to come up with
17 conversion technology processes. Resolution 2002-1077,
18 which actually called for a diversion number as far as
19 conversion technology is concerned.

20 Then, even more importantly, within the last
21 couple of months, the Board had commissioned a life cycle
22 benefits report from the University of California at Davis
23 and a market import report from the University of
24 California at Davis, both of which were terribly positive
25 toward this industry.

1 And yet we have these regulations which seem to
2 be on auto pilot. Auto pilot simply because the time has
3 come to come up with regulations which are written not in
4 the light of all the progress toward permitting and
5 understanding and incorporating within, I might add, even
6 our hierarchy conversion technologies, but sort of moving
7 backwards. And moving backwards, let me just point, in a
8 couple of ways:

9 First, it calls for a full siting element for
10 conversion technology. A full siting element. Can you
11 imagine with the permitting that has to be done anyway as
12 far as air quality, as we heard earlier, and all the other
13 areas, all of which are important. To require a full
14 permitting is very onerous for a business, especially a
15 fledgling business, especially when we're talking about
16 industrial output and not really waste input, the very
17 purview of the Board. So we're treating this industry
18 much more severely even though all our resolutions
19 indicate we should cooperate with the industry.

20 Secondly, in the area of gasification there has
21 to be some kind of legislative relief. This industry is
22 being called upon to have zero emissions, zero emissions,
23 something that the Legislature nor any other industrial
24 regulatory agency requires of any other industry. And
25 even in the light of all the positive reports we have had

1 as far as conversion technologies are concerned, somehow
2 we have a regulation here which calls for zero emissions.
3 That is an onerous burden, a burden you place only on an
4 industry you don't want in California rather than an
5 industry that you do want in California.

6 Finally, there are inconsistencies. An
7 agricultural mass burn is exempted from a regulatory
8 control under the state regulations. Nevertheless, a
9 burn -- and I don't call it a burn -- but a biomass
10 conversion where you have positive results, as you do in
11 conversion technology, they have to fall under the
12 regulations of the California Industrial Waste Management
13 Board. It's not fair and it makes no sense. If they
14 weren't producing anything positive but were just going up
15 in smoke, they would be exempted from the Board's purview.

16 So these are just some areas where I would say
17 that there are inconsistencies; they are ways, just
18 because I would say we're on auto pilot, where the
19 possibility is that the Board would treat this industry as
20 an industry we don't want in California rather than one we
21 do want in California.

22 So I would urge a strong delay. Thank you,
23 members, for giving us the time to be heard on this issue.
24 And we look forward to more testimony and a cooperation
25 with the Board to achieve positive successes.

1 Thank you.

2 CHAIRPERSON MULÉ: Thank you very much.

3 Our next speaker is Mike Mohajer.

4 CHAIRPERSON MULÉ: And, again, if I could just
5 remind all speakers, if you could limit your comments to
6 three minutes or less. And I will remind you when you
7 have 30 seconds left. Thank you.

8 Good morning.

9 MR. MOHAJER: Good morning, Madam Chair, members
10 of the Board. My name is Mike Mohajer. And I'm
11 representing today the Los Angeles County Integrated Waste
12 Management Task Force, which is separate issue than the
13 E-mail that I sent last night. That was as a private
14 citizen.

15 Our task force, they considered the revised
16 regulation. They voted to oppose it. And I'm over here
17 to indicate that. There's a formal letter that should
18 have been received by now. And I have been out of town.
19 So you would be getting it hopefully by today. If not,
20 what I'm saying would be a major part of it.

21 First, I just want to let you know so I won't
22 repeat again, I do agree with all the statement that was
23 made by former Senator David Roberti. And so our task
24 force is in full concurrence with those.

25 And I'd like to add a few other items that I read

1 at least what we are doing down in Los Angeles County.
2 And for the new Board members, if you would note that the
3 Los Angeles County Task Force, it's a regional agency that
4 handles all the solid waste program. It has a
5 representative of the Board of Supervisors, League of
6 California Cities, governmental agencies and so on.

7 One of the things that we are doing in L.A.
8 County, the L.A. County Board of Supervisors and the task
9 force are currently conducting a study with the goal of
10 developing a 100-tons-per-day demonstration facility to
11 gather data on conversion technologies.

12 This scale of 100 tons per day was determined to
13 be barely adequate in order to accurately analyze both the
14 economic feasibility and technology as well as to more
15 closely examine the real-world operational impacts of the
16 facility.

17 The draft regulation would require this facility
18 to fall under the large volume of transfer facility tier.
19 Although they are deemed to be disposal facilities -- this
20 is very important -- they are deemed to be disposal
21 facilities, and all materials processed are counted as
22 disposal. This is very critical that the staff has failed
23 to at least today mention that.

24 This classification requires obtaining a full
25 solid waste facility permit just as any incinerators or

1 landfill disposal several orders of magnitude more
2 materials.

3 Furthermore, by requiring solid waste facility
4 permit at any new conversion facility would be required to
5 be included in the countywide siting element.

6 CHAIRPERSON MULÉ: Thirty seconds.

7 MR. MOHAJER: I know, but these are important,
8 Madam Chair. These are important, and I have cut two and
9 a half pages of what I was going to mention.

10 But the countywide siting element at this in Los
11 Angeles County, it has to be approved by majority of the
12 cities, majority of the cities' population. It's a
13 process that will take two years. And it takes a minimum
14 of a half a million dollars to do just update of the
15 siting element to include one demonstration facility based
16 on what the staff has proposed.

17 If this is not a -- I don't what I should call
18 the regulation. But the Board needs to know this stuff,
19 that it's not brought up. They just say, "Oh, we'll just
20 revise in the transfer station." So this is, from our
21 standpoint, really working backward.

22 In conclusion -- since you gave me the three
23 minutes -- we urge the Waste Board to terminate the
24 regulation process and take a leadership role in revising
25 current statute based on the information obtained in the

1 life cycle and market impact analysis report as well as
2 the input from affected stakeholders. The AB 2770 report
3 to the Legislature is the ideal and appropriate vehicle to
4 lay the groundwork for what should be reasonable and
5 equitable definition of alternative technology, based on
6 sound data and true impacts of this technology relative to
7 other waste resource management options. And this is a
8 report that I think -- that I'm told you're trying to get
9 to the Legislature by the end of this calendar year. So
10 that is the time to do it, is now.

11 And my further request is that if you want to
12 consider this matter by next February, this is absolutely
13 totally inadequate if you have to wait till there are some
14 changes in legislation. Otherwise, as it stays today, you
15 being a common person, again you can just kiss off
16 building any incineration -- I mean conversion facility in
17 California.

18 Thank you.

19 CHAIRPERSON MULÉ: Thank you, Mr. Mohajer.

20 And I just want to note for the record too, that
21 we do appreciate getting the letters, because we do read
22 them. And so if you do have anything written, we do
23 appreciate you submitting your comments in writing.

24 Our next speaker is Toni Stein.

25 Toni.

1 MS. STEIN: Hi. My name is Toni Stein, and I
2 live in Menlo Park, California. And I am here to oppose
3 the proposed current regulations.

4 I encourage you also to oppose these proposed
5 regulations, because they are multiply flawed in the tier
6 placement for the different types of conversion technology
7 categories in Table 1, and because they lack specificity
8 in necessary state minimum standards that are needed for
9 all of the types suggested.

10 Also, I encourage you not to support these
11 because they are not based on sound science. We still
12 have missing information and data from the evaluation and
13 life cycle reports that we need to get to be able to
14 properly tier these technologies into the tier system.

15 The Waste Board has set up in 1996 a procedure
16 for placing different entities into the tiers, and this
17 specifically approved a policy procedure which is a
18 five-step process. Reviewing the public documents
19 available, there appears to be no evidence that that
20 policy procedure approved by the Waste Board has been
21 followed. And this is a concern for placing these
22 properly into the tiers.

23 That procedures looks at environmental
24 indicators. And there has been no analysis or assessment
25 of the environmental impacts relative to the tiers.

1 In addition, I would like to -- I will submit
2 that procedure for you as well into the record.

3 In addition, I would like to state that the
4 intention of the regulations is to provide clarity.
5 However, the definition of gasification seems to provide
6 ambiguity since it is not consistent with the Public
7 Resource Code.

8 Finally, I'd like to wrap up by stating that it's
9 important that the toxic emissions of these facilities be
10 considered and that there be interagency-working-together
11 cooperation to look at where there are gaps in the
12 protection of public health, safety, and the environment.
13 And that the Waste Board has a responsibility to protect
14 the public health. And in siting these facilities that
15 process solid waste, it is in your purview to protect
16 public health.

17 Finally, these regulations are counter to the
18 mission statement of the CIWMB. In particular, they do
19 not provide -- without the minimum operating standards
20 necessary, they don't provide a safe operation of a
21 processing facility for our state. And they also do not
22 protect public health, which is your mission.

23 I hope that you'll rewrite these proposed
24 regulations such that they have their own tier chapter
25 just as the composting regulations do, that can

1 specifically address the special and complex aspects of
2 chemical and thermal processing of solid waste in our
3 state.

4 Thank you very much.

5 CHAIRPERSON MULÉ: Thank you.

6 Our next speaker is Monica Wilson.

7 MS. WILSON: Good morning. My name is Monica
8 Wilson. I'm with the Global Alliance for Incinerator
9 Alternatives and the Northern California Recycling
10 Association. And I'll be speaking mostly to the thermal
11 temperature -- or, sorry -- the thermal technologies like
12 gasification, pyrolysis, and plasma arc.

13 I encourage the Waste Board to not move forward
14 with regulations or in any way encourage the siting of new
15 municipal solid waste incinerators, as some of these
16 conversion technologies are. The Waste Board simply does
17 not have the toxicological expertise to properly evaluate
18 these incinerators and other questionable technologies.

19 The OEHHA memo to the Board pointed out a number
20 of critical areas that were not even considered in the
21 Board reports -- or the reports to the Board by your
22 contractors.

23 Additionally, the life cycle analysis report had
24 huge information gaps about emissions, about feed stocks.
25 There's a lot of questions that are unanswered.

1 And the high lead emissions, that were just
2 astronomical in that report, were not highlighted by the
3 contractors to the Board in their presentations or in the
4 reports themselves, which is a big concern.

5 And despite this, I think that by pushing through
6 these regulations the Board would be rushing to encourage
7 the siting of research in small scale incinerators and
8 other questionable technologies.

9 Additionally, siting these processes would
10 encourage the creation of new toxic byproducts and waste,
11 that I guarantee communities will not want. As you know,
12 the Board studies relied on vendor data. And yet the
13 history of recent gasification and pyrolysis and plasma
14 arc proposals in California have shown that vendor data
15 cannot stand up to scrutiny; and, in fact, permits have
16 been revoked for these facilities.

17 So I think by rushing in at this point, it really
18 shows a lack of concern for public health.

19 Additionally, I think the legislative intent of
20 AB 2770 is pretty clear, that the Legislature did not want
21 a gasification facility that produces toxic emissions.
22 And yet that's what gasification facilities do. There's
23 no question about that. And that was also shown in the
24 reports to the Waste Board.

25 So I think that's pretty clear that the

1 Legislature's not interested in these facilities if they
2 did produce toxic emissions. And that's exactly what was
3 shown in the reports to the Board.

4 So, again, I encourage the Waste Board to not
5 move forward now with these regulations and not to open
6 the Pandora's Box of new incinerators being proposed in
7 communities across the state.

8 Thank you.

9 CHAIRPERSON MULÉ: Monica, thank you.

10 Our next speaker, Scott Smithline, Californians
11 against Waste.

12 Scott.

13 MR. SMITHLINE: Madam Chair, Committee members,
14 good morning.

15 I find myself in the odd situation. I was going
16 to come here and support these regulations today.

17 We appreciate the time that the Board and the
18 staff have put in to this issue of conversion technologies
19 and the challenges that it presents. And we understand
20 the importance of setting up some sort of permitting
21 process for the conversion technology facilities that will
22 be proposed. And we think it's absolutely appropriate
23 that they be tiered and required full permits if they are
24 in that tier section as well. We think it's perfectly
25 appropriate that they have the preprocessing requirement.

1 And that's actually what I'm going to focus on in my
2 comments.

3 Section 17410.5 of these regulations requires CT
4 facilities to remove all recyclable materials and
5 marketable green waste compostable materials to the
6 maximum extent feasible.

7 Our concern is that that provision isn't actually
8 strong enough, and that these regs don't provide for the
9 implementation of that or for the consequences failing to
10 comply with that provision. And we think the importance
11 of that provision cannot be overstated. As new
12 technologies emerge, they're going to start competing for
13 the same resources.

14 Take green waste, for example. Green waste
15 composters are already competing with landfills for green
16 waste, which is being used as ADC, and with conversion
17 technologies. And what we'll be hearing later with new
18 wet cell landfill technologies on the horizon, they'll be
19 even more competition for those green waste resources.

20 If composting, which is a board priority, is to
21 continue to be a viable option for solid waste
22 management -- or for green waste management in the State
23 of California, we think that that provision needs to be
24 strengthened. Specifically we think it needs to be
25 further defined and some sort of enforcement mechanism

1 needs to be recognized in these regulations.

2 Finally, you know, ultimately we feel that as
3 your role in manager of solid waste resources for the
4 state, distinctions will need to be made between
5 conversion technologies, that this is just a word that
6 we've all been using. But there's a broad spectrum of
7 technologies existing and proposed that fall within this
8 scope; and that to adequately manage the resources of the
9 state, we will need to distinguish between those that are
10 more beneficial and those that are less beneficial.

11 Thank you.

12 CHAIRPERSON MULÉ: Thank you, Scott.

13 Our next speaker, Evan Edgar.

14 CHAIRPERSON MULÉ: Good morning.

15 MR. EDGAR: Madam Chair, Board members. I'm Evan
16 Edgar representing the California Refuse Removal Council.
17 We're a trade association with over 50 material recovery
18 facilities, 50 transfer stations, and 15 compost
19 facilities. We are truly integrated to meet the goal of
20 AB 939.

21 We support the concept of putting conversion
22 technologies into the transfer processing regs. However,
23 by default should that not happen, I believe that
24 conversion technologies can go forth and be permitted on a
25 case-by-case basis following the transfer processing

1 regulations. So that should not be stymieing the
2 development of an emerging industry.

3 So if you were to support -- if you were to delay
4 the regulations, which we would support, we believe that
5 the transfer processing regs would prevail and that the
6 industry can move forth.

7 We believe that conversion technologies are a
8 good thing with regards to taking source-separated
9 materials such as green waste to gasify to make --
10 ethanol; take plastics as source separated, make a low
11 sulfur diesel. This fulfills the intent of Governor
12 Schwarzenegger's plan to have a 33 percent renewable
13 energy portfolio by year 2020. We believe that this
14 Council's a hundred percent renewable energy, as already
15 allocated by the California Energy Commission, and
16 eventually just should count towards a hundred percent of
17 AB 939 diversion credit when legislation prevails.

18 But following the source-separated recyclables
19 into a conversion technology's a good thing. That's why
20 we would have to oppose 1741.5 that would have that level
21 of preprocessing that says all removal of recyclables and
22 compostables prior to conversion policies.

23 Well, at 1741.5, source-separated green waste
24 into a gasification process makes ethanol. You need to
25 have that type of material go into gasification.

1 With regards to source-separated plastics that
2 we're shipping off to China or elsewhere, we can take that
3 today with conversion technologies, make low sulfur diesel
4 here in California.

5 So with regard to the merging of policies in
6 California between waste management and energy and clean
7 air, I believe that the Air Board will take care of all
8 the necessary permitting. The Waste Board need not worry.
9 The Water Board takes care of the water policies. And
10 this Board takes care of solid waste management. By
11 encouraging source separation of green waste materials and
12 recyclables to be fed into conversion technologies to make
13 energy products is a good thing. Therefore, I would
14 recommend to oppose 1741.5 and encourage recyclables going
15 into conversion technologies to compete against other
16 waste facilities --

17 COMMITTEE MEMBER PAPARIAN: Madam Chair -- Mr.
18 Edgar, I'm trying to track what you're referring to. And
19 you're missing a number.

20 CHAIRPERSON MULE: Which number?

21 MR. EDGAR: 17410.5.

22 COMMITTEE MEMBER PAPARIAN: -- 10.5.

23 CHAIRPERSON MULE: Okay. Thank you.

24 MR. LARIMORE: Its on page 25 of Attachment 1.

25 MR. EDGAR: What it says is a conversion

1 technology operation of a facility shall only accept solid
2 waste in which to the maximum feasible all recyclable
3 materials and marketable green waste compostable materials
4 have been removed prior to the conversion technology --
5 conversion process. The owner/operator of the facility
6 shall certify that these materials will not -- will be
7 recycle or compost.

8 We believe this feed stock as source separated is
9 a perfect waste stream and recyclable to be fed into
10 gasification and to conversion technology processes to
11 make an ethanol and energy products.

12 So with that being said, we would support a lot
13 of comments made by the Senator with regards to his
14 comments. We would oppose that portion of the
15 regulations, support the concept of putting conversion
16 technologies into the TPR regulations. However, if it
17 were to be delayed, we believe that the transfer
18 processing regs would prevail on an interim.

19 Thank you.

20 CHAIRPERSON MULÉ: Thank you.

21 Our next speaker is Michael Theroux.

22 MR. THEROUX: Good morning. Michael Theroux,
23 Theroux Environmental, Madam Chair and Board members.

24 As a member of the L.A. County Task Force
25 alternative conversion technologies, I do support our

1 consensus request to postpone the passage of the
2 regulations today. But I speak as an individual on one
3 very focused point.

4 In struggling with the complex web that this set
5 up regulations enters into, I realized something. It is
6 not the staff's position to disagree with past
7 legislation. And the legislation in this case in AB 2770
8 says this is a horse. So the staff then turns around and
9 finds a place to put the horse.

10 AB 2770 says this is disposal. And the staff
11 then following that piece of legislation has attempted in
12 its best case to find a place to put that form of
13 disposal.

14 I contend that conversion technologies are not
15 patently management of waste in a manner constituting
16 disposal as is both duplicated in Title 27 and
17 cross-referenced in Title 22 and scattered throughout
18 other codes.

19 There are specific reasons where there are
20 framework for encoding what types of handling of waste
21 constitute disposal. And certainly one can throw away
22 things in many ways. We could use thermal conversion to
23 destruct hazardous medical wastes, for example. And that
24 is certainly management of waste in a manner constituting
25 disposal.

1 But my contention is this is -- the conversion
2 technologies' legislation was initially attempted to put
3 this into place as a beneficial use, not as disposal. And
4 what we're trying to do is separate from those kinds of
5 thermal technologies and other methods that are disposal.
6 Incineration is used as disposal in most cases.

7 The legislative piece in Title 22 and Title 27
8 that I have presented to you in writing, that you've
9 received, indicates specifically that form, incineration
10 as a manner -- as waste handling in a manner constituting
11 disposal. So I would separate that out and ask, first of
12 all, that because the underpinning of this proposed
13 regulations is in error, that these regulations not be
14 promulgated at this time and that we address that much
15 more difficult question of what is and what is not
16 disposal of waste.

17 Thank you.

18 CHAIRPERSON MULÉ: Thank you.

19 Our next speaker, Gary Liss.

20 MR. LISS: Madam Chair, members of the Committee,
21 I thank you for the opportunity to present before you
22 today.

23 Speaking not only on behalf of myself, but Bill
24 Magavern of the Sierra Club; Neil Seldman, Institute for
25 Local Self Reliance; Resa Dimino from Grass Roots

1 Recycling Network; Eric Lombardi of Eco-Cycle; Susan
2 Kinsella of Conservatree; Alan Mueller of Green Delaware;
3 Toni Stein, research scientist; Peter Anderson, Center for
4 Competitive Waste Technologies, and Matt Cotton,
5 Integrated Waste Management Consulting.

6 They all concur with the letter that I just
7 presented before you.

8 First of all, I'm not in support of the proposed
9 regs as indicated in the staff report. And clearly there
10 were many insights from the studies that need to be
11 incorporated, contrary to what staff alluded to in their
12 staff report.

13 In particular, the CEQA evaluation that's going
14 to be required for these regulations need to evaluate the
15 potential impacts of conversion technology facilities
16 before they are built, not after. It is total -- to do
17 otherwise would be totally contrary to the Board's policy
18 for placement of operations and facility types into the
19 regulatory tier structure. It would be counter to federal
20 regulations governing your authority to issue solid waste
21 facility permits and would be counter to the precautionary
22 principle for environmental decision making, which we
23 advocate.

24 On the specifics, there should be no definition
25 of conversion technology. It does not exist. As a term

1 of art, it's confusing, it's overly broad, provides no use
2 in placing facility types into the regulatory tiers.

3 Instead let's focus on what we're dealing with.

4 The staff reports in the studies show that what we're
5 focused on -- these technologies to primarily focus on is
6 organics and plastics. As a result, we suggest renaming
7 Chapter 3.1 as an organics processing system regulation,
8 to put organics technologies on a level playing field;
9 that the composting regulations that are currently there
10 as Chapter 3.1 should be one of three subchapters. There
11 should be a second subchapter for biochemical technologies
12 as defined in the UC studies, and a third subchapter for
13 thermochemical technologies as defined in the UC studies.

14 Further, the Waste Board should not provide any
15 technical, regulatory, or financial support to
16 thermochemical systems for reasons we've made very clear
17 in the past from the environmental community.

18 The regulation should not allow residues from
19 material recovery facilities or mixed solid waste to be
20 used in thermochemical systems because of their
21 environmental impacts. And only source separated or
22 positively sorted materials from MRFs be used to meet
23 specific market specifications that do not include PVC to
24 be allowed into these technologies.

25 Many have spoken on the exclusions for

1 recyclables and compostables. It's clear we're competing
2 for organics. I thank Evan Edgar to make that absolutely
3 clear. We're competing for organics and the appropriate
4 use of them in this state. The highest and best use is
5 for composting to rebuild the soils of our state. Our
6 soils need it. The markets are there to use every drop of
7 compost developed in the state. No one has a problem
8 marketing to ag. They need it. Let's support that
9 industry. And the compostables exclusion as specified
10 needs to be expanded to include food waste so that the
11 Waste Board does encourage highest and best use for those
12 materials to rebuild the soils.

13 Diversion credit. There should be no diversion
14 credit given to jurisdictions or biochemical or
15 thermochemical systems.

16 On environmental review, the Waste Board needs to
17 take a broad view of its responsibilities. As the
18 Legislature has given you the responsibility in the
19 studies, they look to you to look at this not only for the
20 Waste Board's concerns, but also working together with the
21 other agencies on air and water.

22 And we ask that you look at the environmental
23 impacts as you would in evaluating CEQA documents. When
24 people bring forward solid waste facility permits you see
25 whether the CEQA documents are adequate that were

1 developed at the local level. You determine an adequacy
2 whether they covered your CEQA concerns. If they haven't,
3 they need to be sent back. You should do the same for the
4 environmental impacts from conversion technologies.

5 Last I want to underscore that the adoption of
6 these regulations would result in significant time being
7 required by both staff and Board members to respond to the
8 public outcry resulting from this action. Already three
9 projects have been killed in California or seriously
10 delayed due to the public outcry. Many more will be
11 killed if you empower people to go forward without the
12 proper controls and clarification of what the goals of the
13 state are.

14 The Waste Board should recognize that it could
15 avoid much of the those problems by not supporting
16 thermochemical systems and proceeding cautiously with
17 other systems only after the completion of scientific
18 analyses that are generally accepted both by industry and
19 environmental groups, which is not the case with the
20 current studies that you have completed.

21 Thank you.

22 CHAIRPERSON MULÉ: Thank you.

23 Yvette Agredano.

24 We have two more speakers, and then we'll be
25 finished with this item.

1 MS. AGREDANO: Good morning, Madam Chair,
2 members.

3 In the interests of time -- Yvette Agredano with
4 the California chapters of SWANA -- I will just say that
5 we agree wholeheartedly with Senator Roberti and the
6 comments that he made. So I will therefore just let you
7 know that although we don't oppose the package, we just
8 feel that the regulatory package is premature at this
9 point. And that is given that at this point there are no
10 pending facility proposals before the Board. And I will
11 just that therefore we respectfully urge this Committee
12 and the full Board to place the proposal on hold and take
13 a more of a leadership role in seeking out legislation to
14 do the following things:

15 To remove conversion technologies from
16 transformation; to provide for performance-based standards
17 for environmental compliance which are to be regulated by
18 existing state and environmental regulatory agencies; and
19 to provide for diversion credit for conversion technology
20 facilities as identified by the life cycle and market
21 impact assessment report.

22 It should be noted that the need for diversion
23 credits is further substantiated by the Board Resolution
24 Number 2002-177.

25 I thank you, and I'm available for any questions

1 that you might have.

2 CHAIRPERSON MULÉ: Thank you.

3 Our next speaker is Bill Magavern.

4 MR. MAGAVERN: Good morning. I'll be brief since
5 my points have been made by other speakers.

6 The phrase "conversion technologies" is so broad
7 and vague as to be utterly meaningless, actually worse
8 than meaningless because it's misleading. And I thought
9 this point was made in the UC reports, and we talked about
10 those a few months ago. And I didn't hear anybody
11 disagree actually that this term is not helpful. So I
12 don't understand why it's still being used. I think we
13 need to move on and be much more specific. I hope that,
14 you know, there won't be another meeting where this point
15 has to be made again.

16 In terms of the thermochemical systems, we said
17 all along we need to see actual emissions data before we
18 could be comfortable seeing these sorts of technologies
19 cited in California. We just need to know what are going
20 to be the impacts on our air and water. And unfortunately
21 the reports did not really shed any light on that. So we
22 would oppose going forward with permitting the high heat
23 technologies until those questions are answered.

24 And, finally, just to back up the point, we need
25 to make absolutely sure that all of our recyclables and

1 compostables are excluded and are used for their highest
2 and best use.

3 Thank you.

4 CHAIRPERSON MULÉ: Thank you.

5 Okay. That concludes the -- I guess our public
6 hearing now.

7 And what I'd like to do, with the agreement of
8 the rest of our Committee members, is -- we do have a
9 speaker here on Item 30 who has to leave to be sworn in
10 again as a senator. So with your permission, I'd like to
11 call Senator Ducheny to come up and speak on Item 30.

12 COMMITTEE MEMBER PAPARIAN: Okay. Madam Chair,
13 when she's done I'd like to make some comments on that
14 last item.

15 CHAIRPERSON MULÉ: Okay. Thank you.

16 MS. DUCHENY: Thank you very much, Madam Chair
17 and members.

18 We do appreciate the opportunity and your
19 indulgence of allowing me to go out of turn to watch my
20 colleagues be sworn in at noon.

21 I do have a letter for submission to your record.
22 I think I have three or four copies here if you need more.
23 So that I can keep my remarks short.

24 But, you know, this is the question and it's been
25 around San Diego County for some years, since 1994 when

1 there was a local initiative that was put forward to try
2 to site a waste disposal facility by initiative, which I
3 think is sort of where the problem with all of this thing
4 begins. Because the truth is that that process
5 circumvented the local process of siting, of looking for
6 sites, of evaluating alternatives, and sort of jumped over
7 the entire process and said, "We're just going to have the
8 voters do the zoning. "

9 Zoning by ballot box is something that I've never
10 been fond of in a lot of different ways. And in this
11 particular instance I think it's particularly egregious
12 because you're saying let's put this in a particular
13 location, in a very special location, frankly, from an
14 environmental perspective and from a historical and
15 cultural, religious perspective for the native American
16 tribes through that area. And just to have voters who had
17 no understanding of any of those issues to just say,
18 "Well, this is how we're going to zone it," and not have
19 what the county process normally would have required,
20 really evaluation of a multitude of sites, trying to find
21 them. And in fact this site had been on that list for
22 some time before that, was rejected for a variety of
23 reasons, most of which resurfaced again as you now are
24 presented with EIR and a proposed statement of overriding
25 considerations.

1 I would urge you not to adopt the statement of
2 overriding considerations and to reject the permit,
3 because I do not believe there is any way to really look
4 at this and say that the benefits outweigh the damages.
5 They are clearly unmitigable. And I think the fear that
6 many of us have of the interaction with the groundwater
7 basin of the San Luis Rey River, of the fact that we would
8 be asked to move the Colorado River aqueduct that comes
9 into California as sort of -- into San Diego County, a
10 kind of a lifeblood of our water supply, and not to
11 mention one of our last free-flowing rivers and the
12 groundwater aquifer that goes with it, the San Luis Rey
13 aquifer.

14 Most of the cities in north county for those
15 reasons and because of the interaction with the San Luis
16 Rey River are opposed to this project.

17 And I think the other thing that we've seen is in
18 the last ten years, with your work and what's gone on here
19 from the state, we are really actually doing what we were
20 supposed to do in reducing our trash. We are recycling.
21 There are new technologies. There are new opportunities.
22 And the demand for this particular site to have this
23 landfill I think has been diminished, frankly, in the last
24 ten years.

25 And maybe some day there ought to be another site

1 in San Diego County. But it ought to be a site that has
2 gone through a process where the zoning comes through the
3 process and not sort of fitting the square peg in the
4 round hole by doing the zoning first and then fitting the
5 landfill into the site. That's what you're really being
6 asked to do with this permit.

7 I think with all of the EIR documents, and
8 certainly appreciating the investment that the investors
9 have made in this project over these years, the truth is
10 the process was backwards. It was always a sacred site.
11 And if you go back to the 1994 ballot argument -- I
12 remember this -- the people who opposed it were the then
13 county supervisor for that area, Bob Frazee -- or John
14 MacDonald, who Frazee at that time was the state senator,
15 but John MacDonald was the supervisor and Robert Smith
16 who's the Chairman of Pala Band of Mission Indians. That
17 has been consistent. This is the land that is adjacent to
18 the reservation. It is land that has always been sacred
19 to the people of that area.

20 And, you know, the Legislature got involved in
21 this some years later. It's just been around and around.
22 And, in truth, if SB 18, which signed into law by the
23 Governor this last fall, had been in effect in those days,
24 the county would have said, "This is land that is off
25 limits to development." And, granted, we're ten years

1 late getting that law into effect, but that is now the law
2 of this state, that we should respect traditional tribal
3 cultural sites, that they ought to be acknowledged up
4 front in a land-use planning context with counties and
5 cities as we move forward. We hope that will be the way
6 in the future. And if you reject this and people have the
7 opportunity to then relook at such time as it may be
8 determined that California -- that San Diego County needs
9 another waste disposal site, that we would have all of
10 those criteria in place and do it under appropriate
11 general plan amendments.

12 I ask for your rejection of the statement of
13 overriding considerations and of the permit ultimately.
14 And am prepared, my office, to answer any questions. I
15 know there will be another hearing next week.

16 Thank you very much.

17 CHAIRPERSON MULÉ: Thank you, Senator. And
18 congratulations, by the way.

19 Okay. Let's go back to the conversion technology
20 item.

21 You had a question, Mr. Paparian?

22 COMMITTEE MEMBER PAPARIAN: Yeah, just I had --
23 actually I counted a mere five quick points.

24 The use of the three-part test to apply to these
25 sorts of facilities I think is an improper use of the

1 three-part test. I think that if you look at what is
2 reuse and recycling as the three-part test is supposed to
3 be applied, the type of technology that's used here
4 doesn't really fall into that in the sense of traditional
5 use of the definition of recyclable material. So I think
6 that we probably need to remove the three-part test from
7 application in this case.

8 Secondly, we went -- in our last meeting we
9 talked about how to apply the C&D-type requirements on
10 other facilities. And we set up a several year timeframe
11 for assuring some consistency amongst our different types
12 of permits. I think we ought to make sure that if we move
13 forward with this sort of permitting process, we do draw
14 from the C&D permitting process those items that, you
15 know, ought to have the consistency. And the staff has
16 already taken a quick look at this, and it includes things
17 like fire prevention plans, public hearings, three
18 strikes, and surprise random inspections.

19 I think if -- you know, if you look at the
20 facilities, you know, they're comparable if not perhaps
21 more challenging in some ways than C&D's because they do
22 have stuff that can create problems if it's not handled
23 properly.

24 Thirdly, the preprocessing. I think it is
25 appropriate to have the preprocessing in the regs. I

1 think Mr. Smithline pointed out that perhaps it could be
2 stronger. I think we ought to take a look at that and
3 just make sure the preprocessing is part of it. I think
4 that's consistent with what the Legislature asked of us.

5 I think we also need to make sure that we are
6 consistent with the Public Resources Code. Until it's
7 changed, you know, that's what we have to live with,
8 that's what we have to assure that we abide by.

9 And then, finally, Mr. Liss suggested some sort
10 of separation of organics processing from other types of
11 processing. And I think that might be appropriate,
12 certainly worth looking at the suggestion that we
13 segregate the types of materials in the way that we would
14 regulate those types of facilities.

15 So those are my thoughts after listening to the
16 comments and then looking at this myself.

17 CHAIRPERSON MULÉ: Thank you, Mr. Paparian.

18 Ms. Marin.

19 COMMITTEE MEMBER MARIN: Yes, Madam Chair.

20 One of the things that, you know, I am -- we must
21 be doing something right when we have people that are
22 opposed to whatever we're doing from two different
23 perspectives. Like, wait a minute. We must be doing
24 something right. I like the challenge that is before us.
25 Because on the one hand we have people that say don't move

1 forward because you really don't know what you're -- what
2 we're getting into, you know. They're saying it doesn't
3 exist. There's no conversion technology. There is
4 nothing like that.

5 But wait a minute. Don't do it. But if you're
6 going to do it, make sure that -- let's see, how is it --
7 you need to be evaluated before, not after.

8 So I'm puzzled by that challenge. How are we
9 going to evaluate something that doesn't exist? But if
10 we're going to do it, then we need to evaluate it before,
11 not after. Challenging. So staff is probably going to do
12 some trapeze, and they probably have been doing this for a
13 long time.

14 I like to -- I think it's an interesting
15 challenge. We have -- we want to provide the
16 opportunities for this new technologies, for lack of a
17 better word. We want to invite that. I mean California
18 is the prime example, you know, to push something forward
19 that at the end it is better for our environment.

20 I understand what people are saying. But if
21 you're going to do this, take care in how you are going to
22 approach it. I think that that's what they're telling us.
23 And I think we need to be very careful in listening to
24 that and understanding the concerns that many of the
25 people have expressed.

1 I think that they have the same goal that we do.
2 See, I believe that both extremes have exactly the same
3 goal that we do. So the challenge for us is to fashion it
4 in a way that at the end we're all winners. And if
5 semantics is a challenge, if people want to name it
6 something else because it doesn't exist -- and it's
7 true -- so how do we create something, you know, and
8 provide the security that is needed to achieve what we all
9 desire?

10 I know that this is a hearing, Madam Chair. I
11 know that there is no action that is going to be taken
12 today.

13 I do want to ask staff to be very cognizant of
14 the challenges that have been posed before us. And, you
15 know, I know that it's going to be a painful process
16 because trying to get the two sides to agree is very
17 challenging. I can't find another word except that we
18 have a challenge before us.

19 The zero emissions, you know, people that are
20 very concerned with our environment and they don't want
21 any, you know -- and our regulations call for zero
22 emissions, that's also of great concern. How do we invite
23 people to do something and yet ask them to do something
24 that has never been done before or no other industry is
25 being required to do? And yet I acknowledge the concerns

1 that people have expressed in that we don't want to
2 pollute our environment. I don't think anybody here does.

3 So this to me has been as usual very
4 enlightening. But I do believe that we can succeed, that
5 we can -- at the end of the day we'll have a very good
6 product.

7 And in delaying it, as some people suggest, it
8 might be something that we consider to come up with a real
9 product that everybody will be able to support.

10 And I don't know that we will have a hundred
11 percent support. There may be some areas where we may
12 have to give in a little bit and some people may not be
13 completely and totally satisfy. But I welcome that
14 challenge, Madam Chair and Board members. I think we
15 should move forward, understanding very clearly the
16 concerns that people have expressed.

17 CHAIRPERSON MULÉ: Thank you.

18 And I would like to agree with what you said. I
19 mean what we're -- we're blazing new territory, as I keep
20 saying to everyone. You know, once again California's in
21 the forefront of going down a new path with conversion
22 technologies. And it's one that I think we all need to
23 be -- move forward but move forward very cautiously and
24 deliberately. And so I do agree with you.

25 I think one of the things that we found from the

1 life cycle analysis reports is that we have had more
2 questions than answers. And so we discovered that there's
3 a lot more work that needs to be done. So, again, if we
4 could just move forward on this. And, again, maybe we do
5 need to look at the regulations and maybe put them on hold
6 till we have some more answers.

7 But with that, I'd like to move to the next item,
8 which is another public hearing, on the proposed
9 regulations for RCRA Subtitle D Program Research,
10 Development, and Demonstration Permits.

11 Howard.

12 DEPUTY DIRECTOR LEVENSON: Thank you, Madam
13 Chair.

14 This item, Board Item 23, Committee Item E, as
15 you said, is the public hearing on the proposed
16 regulations for the RCRA Subtitle D Program Research,
17 Development, and Demonstration Permits.

18 And Scott Walker will be making the initial staff
19 presentation.

20 REMEDIATION, CLOSURE, & TECHNICAL SERVICES BRANCH
21 MANAGER WALKER: Thank you. Scott Walker, Permitting and
22 Enforcement Division.

23 This item constitutes the required public hearing
24 for proposed regulations for research, development, and
25 demonstration permits, or RD&D permits. The proposed

1 regulations would provide the Board with Subtitle D
2 Municipal Solid Waste Landfill Program authority to issue
3 site-specific variances from specified -- under specified
4 condition to promote innovative technologies.

5 Examples of potentially applicable technologies
6 include bioreactors and certain alternative final cover
7 systems.

8 In July, the Board directed staff to notice the
9 proposed regulations for a 45-day comment period. The
10 written comment period was conducted and closed November
11 30th. The public hearing addressed by this item provides
12 additional public comment opportunity concerning this
13 concerning this rule making.

14 Staff will review all written and oral comments
15 received, and then we will bring back to the Committee
16 options for consideration with respect to adoption or
17 changes to the proposed regulations for an additional
18 comment period. It is anticipated that this will occur,
19 at the earliest, in February.

20 I'd also like to point out that the State Water
21 Resources Control Board is in the process of amending
22 their Policy 93-62, to incorporate RD&D flexibility in
23 California's program -- their part of California's
24 program. And staff's from both agencies continue to
25 coordinate on this effort.

1 This is a committee-only item, and no action is
2 to be taken.

3 And that concludes staff's presentation. And
4 we'd be happy to answer any questions.

5 CHAIRPERSON MULÉ: Thank you, Scott.

6 We have several speaker slips again on this item.
7 And we have received letters on this item from Yolo County
8 as well as Californians Against Waste.

9 What I'd like to do though is call the speakers
10 to come up. And, again, if you could limit your comments
11 to three minutes, we certainly would appreciate it.

12 The first speaker is Peter Anderson.

13 MR. ANDERSON: Thank you, Madam Chair. I
14 appreciate the time.

15 CHAIRPERSON MULÉ: Good morning.

16 MR. ANDERSON: Good morning.

17 Certainly the issue of bioreactors is something
18 that is worthwhile investigating. But it is a very risky
19 technology. It is much more demanding. And the research
20 that's being proposed, we believe, is not being structured
21 properly.

22 We submitted comments in July. Let me just focus
23 on one of them because time is short. And that's the
24 issue of: Who should control the parameters of what
25 should be researched? And I think a very good example of

1 why not to do it this particular way, which is essentially
2 to delegate to the waste industry what the parameters
3 should be for what should be researched, is the recent
4 stories we've heard about Vioxx. And although it's off
5 subject, it tells us something much about why research has
6 to have a public component about what is analyzed.

7 In the Vioxx case, as you remember -- it's a very
8 wonderful story -- it's done about the details we know
9 about from the New York Times and the Wall Street Journal.
10 Essentially what happened was the FDA left in the hands of
11 Merck, the drug manufacturer of that drug, what to be
12 researched. In the year 2000 -- 1999, year 2000 research
13 came up that suggested but did not prove there was a
14 strong concern about heart attacks. Instead of going
15 forward with research to resolve that issue, because of
16 the economic pressures on the firm -- and I don't mean to
17 say that those are not substantial or that any of us in
18 their shoes may have done anything differently -- but
19 because of fact that all their existing patents were
20 expiring, the pressures were strong, they chose not to
21 research it. No one forced them to research it. It only
22 came out in 2004 about the heart concern, because other
23 research being done for marketing purposes collaterally
24 disclosed that the ambiguity was resolved and the cause
25 exist.

1 Now, with regard to bioreactors, you have some
2 major concerns there about site stability. We already
3 have cases where sites have collapsed. We already have
4 instances where we were concerned about that. And the
5 industry has already walled off research about making the
6 site slopes shallower to avoid that issue.

7 We have major concerns in this day and age with
8 greenhouse gases. We have to know what to do about the
9 air collection issue. And it's unresolved.

10 These issues that are of major concern, whether
11 they're going to have site collapse, whether they're going
12 to have greenhouse additions, need to be resolved with
13 parameters that are specified by you, the Board. And I
14 think it's not a question of pro-business or
15 anti-business. The good people in business want to do the
16 right thing too. But right now it falls to the lowest
17 common denominator, and it relies upon you as a state to
18 set boundary lines so we know that what's being done is
19 being done right.

20 So we hope that you will look at our comments and
21 focus on the issue of who should specify those design
22 parameters for the research.

23 Thank you very much.

24 CHAIRPERSON MULÉ: Thank you.

25 Evan Edgar.

1 MR. EDGAR: Madam Chair, Committee members. My
2 name is Evan Edgar representing the California Refuse
3 Removal Council. We're a trade association of 100
4 collectors, 50 MRF transfer stations, over a dozen compost
5 facilities and a dozen landfills.

6 We support the RD&D regulations. We would
7 encourage the rapid decomposition of landfills to produce
8 landfill gas and to shorten the post-closure aspects of
9 it. This afternoon there's a workshop from 1 to 5
10 regarding the dry tomb theory about some long-term issues
11 about dry tomb in the post-closure care of those dry
12 tombs. With a wet tomb you have rapid decomposition. And
13 therefore some of those issues would be resolved.

14 Another driver of this is that there are air
15 permits and Water Board, which are separate under AB 1220.
16 But with regards to the Water Board, the Water Board has
17 their regulations going forth on the whole bioreactor
18 aspect of RD&D, which you support as well.

19 But a driver is that a lot of landfills in the
20 Central Valley are going double liner. It's a trend out
21 there. And some water boards that have impacts to water
22 quality could be diminished so they want the double liner.
23 So if you're going to have that type of an investment into
24 a double liner system, this makes sense to have a
25 bioreactor landfill to collect the different landfill

1 leachates.

2 I was at Yolo County from 1990 to 1993. And I
3 was on the forefront of bioreactor landfills with Ramin
4 Yazdani, who will speak later. We went CEQA. We went
5 through a lot of different impacts back then. And from
6 that time we've come a long way at Yolo County. I think
7 this is -- we're beyond RD&D. This should be state of the
8 art. I think that the Water Board addresses the water
9 quality impacts.

10 With regards to the collection of landfill gas
11 and air quality aspects, the landfill gas systems have
12 come a long way. Those greenhouse gases are collected.
13 We're collecting the methane, making alternative energy.
14 The federal EPA just extended the tax credits for landfill
15 gas, which is a good thing, and that goes toward the
16 portfolio for the renewable energies in California to hit
17 the 30-perent renewable aspect that the Governor's
18 promoting.

19 So we would encourage the adoption on this
20 regulatory package. There are two issues on hand with
21 regards to the number should be -- how many numbers should
22 be adopted. I believe the driver is once again double
23 liners are incumbent to California in the Central Valley.
24 If you have a double liner, you should be able to have a
25 bioreactor landfill regardless. I think it should not be

1 limited by numbers, but limited by how many -- if you have
2 a double liner, you should go forth.

3 The second aspect is preprocessing. If you have
4 local self hauls and local direct haul going to the
5 landfill, that's one thing and they should allow it to
6 continue. But coming from a transfer processing station,
7 we have this MRF first policy about level preprocessing.
8 But anything coming from a transfer processing facility
9 that has a MRF component should take up the high-grade
10 materials. The MRF residuals should be allowed to go into
11 the bioreactor landfill even with organics. There's a lot
12 of low grade paper and organics that go past the MRF
13 system without markets.

14 So we believe that the level of preprocessing
15 from transfer processing facilities should allow organics
16 to go through with respect to the MRF residuals. We
17 support the regulations.

18 Thank you.

19 CHAIRPERSON MULÉ: Thank you.

20 Our next speaker is Scott Smithline, Californians
21 Against Waste.

22 MR. SMITHLINE: Madam Chair, Committee members,
23 good morning again.

24 Californians Against Waste supports the concept
25 of doing research on wet cell landfills. We think that

1 they may hold potential for the State of California.

2 We also feel that as written these regulations do
3 not adequately protect the state from the potential
4 impacts of loosening the Subtitle D requirements on
5 landfills in the state.

6 As we have stated in previous testimony and
7 letters, we think that as a minimum the regulations need
8 to have protocols regarding the following issues:

9 An analysis of accumulation of toxics, in
10 leachate and gas emissions, a control cell, maximum energy
11 recovery feasible, post-closure analysis, and analysis of
12 abandonment, effects on organic markets and preprocessing.

13 Basically we feel that this is a research
14 designation. These are research and development
15 regulations. That therefore projects regulated pursuant
16 to these regulations need to perform those tasks. And,
17 specifically, to agree with the previous speaker, Mr.
18 Anderson, we agree that those tasks need to be outlined in
19 the regulations themselves, not in the permitting process.

20 And, finally, our ultimate -- or our last concern
21 is that the addition of liquid to technology that has
22 previously been a dry technology, a dry cell technology
23 does raise concerns about slope stability and
24 environmental and public health impacts. And we're
25 concerned that these regulations don't adequately address

1 that issue either.

2 So until these issues are addressed, we are not
3 in favor of moving forward with these regulations.

4 Thank you.

5 CHAIRPERSON MULÉ: Thank you.

6 Gary Liss.

7 MR. LISS: Madam Chair, members of the Committee,
8 thank you again for the opportunity to address this issue.

9 I speak in opposition to the regulations as
10 proposed for the reasons that are outlined in a memorandum
11 that Peter Anderson wrote to the Board dated July 5th,
12 2004. Those comments made then I enter into the record
13 now, as Peter alluded to in his comments earlier. And I'd
14 like to highlight a couple of the points that he did not
15 make.

16 First, the whole issue of the cost collar.
17 What's basically happening here is a major fight
18 throughout the nation on whether we're going to do
19 bioreactors right or not, whether we're going to do them
20 on the cheap in order to compete with existing landfill
21 pricing or actually be less than the cost of today's
22 landfilling, or whether we're going to do it with every
23 precaution we can think of so we don't have slope
24 stability failures and we don't have leachate and
25 excessive greenhouse gases produced.

1 During the stakeholder dialogue a bioreactor
2 proponent directly argued that bioreactor rules cannot be
3 too stringent because that would increase costs too much.

4 That's what we mean by the cost collar. If it is
5 going to increase the cost to do it right, the cost is not
6 your mandated responsibility. California law does not
7 tell you to protect public health, safety and the
8 environment where costs are competitive with existing
9 systems. There's no such authority to this Board to do
10 that.

11 You must protect public health, safety and the
12 environment, period.

13 So the cost collar is a critical issue, and you
14 should bend over backwards to make sure things work.

15 Secondly, Peter talks about the performance
16 criteria are not enforceable. On the face, waste industry
17 representatives say, "We just want to meet a performance
18 standard." But what they don't tell you is there's no way
19 under current technology to properly measure performance.
20 We had the principal, the Chair of Geosyntech testify at
21 the international dialogue of the Global Recycling Council
22 where he indicated that all landfills leak. And what
23 designers do is look to mitigate those leaks and design to
24 minimize them when they occur. But all landfills leak, he
25 is quoted as having said.

1 We believe him. And the Geosyntech report
2 highlighted that two-thirds of California landfills are
3 leaking or have leaked and required water quality
4 performance problems.

5 There's no reliable means to directly measure the
6 hydraulic head because of problems with instrumentation at
7 those depths under the landfill conditions. Head buildup
8 is instead done with pencil calculations from a
9 mathematical model called Help, appropriately, that does
10 not reflect problem which may well be occurring in the
11 leachate collection lines that are far more prone to clog
12 with leachate recirculation of a bioreactor than a dry
13 tomb landfill that Help was designed for.

14 And the proposed rule does not require any direct
15 instrument readings or drilling into the waste load to
16 take measurements which at a minimum should be required.

17 Further, we need to look at the research protocol
18 that Peter did talk about, and he specified on page 7 a
19 suggestion of how to do that. He suggested that the staff
20 set up criteria for evaluating any applications for
21 research permits, that the Board will accept applications
22 on a cycle for research, but not for a total period of
23 time longer than three years. Applications will be
24 reviewed to determine which ones best meet the criteria
25 set forward in terms of addressing the issues of concern

1 and the rigor of the testing protocols. And then based
2 upon a literature search of bioreactor research and a
3 meeting of stakeholders and appropriate experts being
4 brought involved, they will select the appropriate
5 research items.

6 Thank you for the opportunity to speak today.

7 And I wish you the best on this challenge as well.

8 CHAIRPERSON MULÉ: Thank you.

9 Our next speaker is John Benemann.

10 MR. BENEMANN: Thank you, Madam Chair, members.

11 My name is John Benemann. I'm with the Institute for
12 Environmental Management, Inc. We are a not-for-profit
13 organization founded 12 years ago, approximately, by Don
14 Augustine, who usually comes to these things.

15 I have been doing this work where the company was
16 founded specifically for bioreactor landfills and for
17 anaerobic digestion technology. And I've been doing this
18 work for the last 12 years on a pro bono not-for-profit
19 basis. My day job is to do hydrogen and gas research.
20 The pace is better since it's actually more research.

21 I just want to say that as an expert that has
22 worked in the whole area of environmental technologies and
23 energy technologies, I think that there's none that's more
24 important than bioreactor landfills. And that's what I'm
25 here today to talk to you about. Hydrogen's still a long

1 ways to the future. Bioreactor landfills are here. They
2 are something that does exist now.

3 The proposed regulations provide for the
4 flexibility that the landfill owners and operators need to
5 manage landfills in the light of best technologies and
6 still be under the documented and open provisions of the
7 RD&D program.

8 I should comment that I am -- do most of my
9 research running research programs. And I don't see how
10 the Board can really make regulations on how to tell
11 people how to do the research. I think the staff, the
12 permitting, and the usual process by which these projects
13 are evaluated.

14 I should say that I was the one who actually
15 started with the Yolo County project by convincing the
16 Department of Energy to fund this as a gas measure.

17 To conclude, I will say that the adoption of this
18 regulation will allow for better landfill operations and
19 waste management. I ask you please not to delay this.
20 This is a very important regulation, and to also assist us
21 with the RD&D to the best of your ability.

22 Thank you.

23 CHAIRPERSON MULÉ: Thank you.

24 Our next speaker, Ramin Yazdani.

25 MR. YAZDANI: Good morning, Madam Chair and

1 Committee members. I'm here on behalf of Yolo County to
2 support the RD&D rule.

3 Yolo County Board of Supervisors submitted a
4 letter of support to you in regards to supporting this
5 rule.

6 Yolo County has been conducting research in the
7 area of landfill bioreactor for the past 14 years in
8 cooperation with both state agencies and universities.
9 We've worked with the Water Board, the state agencies, as
10 well as local LEAs and air districts. We've also been
11 working with University of California and University of
12 North Carolina and University of Delaware in doing
13 research. So we feel that the development of scientific
14 database can be done with the current RD&D rule. There is
15 plenty of items listed in the document that allows
16 agencies to provide the data to the agencies as they
17 require them and for public to review them.

18 County plans to continue these efforts and seek
19 RD&D flexibility for future projects at Yolo County, and
20 would further -- in order to further the scientific
21 knowledge base for bioreactors in the State of California.

22 California is the leading state agency in this
23 area, and among a few other states that are moving
24 forward. And I think by approving this rule, continue to
25 show that we are a leading state in developing this

1 technology for better management of solid waste.

2 So on behalf of Yolo County as well as a member
3 of SWANA, who has supported this -- unfortunately, I have
4 not -- I did not hear that that letter was submitted to
5 you -- but I've seen a draft copy that was sent to me, and
6 I'm sure you'll be getting that.

7 So I ask you to support this rule without further
8 delay. I think this technology promotes renewable energy
9 and generation of that type of electricity as it was
10 mentioned earlier. And it also promotes reduction of
11 fugitive emissions from landfills -- fugitive emission gas
12 from landfill and it reduces the future risk for
13 landfills. And I would respectfully ask you to move this
14 forward and approve projects that we can get more data.

15 Thank you.

16 CHAIRPERSON MULÉ: Thank you, Ramin.

17 Two more speakers.

18 George Larson.

19 MR. LARSON: Thank you, Madam Chair and members.
20 George Larson representing Waste Management.

21 We're here to provide our support for the
22 regulations. And we have submitted in writing our
23 comments. But for the record, we feel that moving forward
24 will provide for enhanced treatment and stabilization of
25 waste in landfills, promote the more effective recovery of

1 renewable energy and gas, provide for the treatment of
2 leachate in landfills to a more benign state, maximize the
3 utilization of air space and reduce the need for new
4 landfills, and provide for the quicker transition to
5 post-closure land use, and would provide for beneficial
6 use of non-hazardous liquid waste.

7 For those reasons we support the regulations.

8 CHAIRPERSON MULÉ: Thank you.

9 Our final speaker is Toni Stein.

10 MS. STEIN: Hi. Toni Stein from Menlo Park,
11 California. I would like to mention that I'm an
12 environmental engineer and I have a Ph.D in that.

13 I specifically want to address the fact that just
14 like the conversion technology regulations, I think that
15 the preprocessing requirements should apply as well to
16 these RD&D facilities. Specifically compostables and
17 source separated as well as anything -- materials that
18 have been fully recycled should be the only materials that
19 should go into these facilities.

20 In particular, our compostables have a better use
21 in regenerating and providing nutrients to our top soils
22 for our state's agricultural economy as well as our
23 communities. And that this is an important feature that
24 should not be overlooked.

25 Thank you very much.

1 CHAIRPERSON MULÉ: Thank you.

2 That concludes our public comments and the public
3 hearing.

4 I do see Mr. Mello here from the State Water
5 Resources Control Board. And I just wanted to ask you if
6 you have any comments to make for us today.

7 Thank you.

8 MR. MELLO: Good morning, Madam Chairwoman,
9 members of the Board. My name is Joe Mello. I'm Program
10 Manager, State Water Resource Control Board.

11 Just what I'd like to add is I've been involved
12 with your meetings you've had for the public for the last
13 year and a half. We are working with the Waste Board on
14 the regulations. We are following a slightly different
15 path. Right now we're proposing just to revise our
16 Resolution 93-62.

17 In a letter to Mr. Leary from our executive
18 director, our executive director set a timeline of March
19 of next year to be at a workshop for ours, and hopefully
20 will be passed by OAL by May.

21 Other than that, as I've stated previously at our
22 public meetings, that slope stability issues are handled
23 by the Water Board. They are under our current
24 regulations. Liner design, same thing. As you've heard
25 complaints before your Board before, some of our regions

1 are requiring double liners. So we do have the ability to
2 require double liners, or more stringent than that if
3 called for with a bioreactor.

4 CHAIRPERSON MULÉ: Thank you. Appreciate that.

5 I guess now that formally ends our public
6 hearing.

7 And are there any questions or comments from the
8 Board members?

9 Yes, Mr. Paparian.

10 COMMITTEE MEMBER PAPARIAN: Yeah, Madam Chair.

11 After our last hearing on this, I went and took a careful
12 look at the federal rules for this. And I actually
13 brought some copies, because I think they're important to
14 understand. I also then asked our Legal staff to prepare
15 answers to some of the questions that I had about the
16 applicability of the federal rules which allow us to adopt
17 the regulations that we're talking about. And I wanted to
18 make sure to -- to make this public and have it in the
19 record so I have that as well.

20 There are a couple of the points -- and I'll be
21 pretty brief. The federal register allows for these sort
22 of extraordinary permits, but only for three years at a
23 time. They're renewable for a maximum of 12 years. The
24 state has some extraordinary authority to pull those
25 permits, to stop the facility if the research goals or

1 goals laid out for the siting of those facilities, if
2 those goals aren't being met. And it also allows the
3 state to determine what should or shouldn't go into the
4 facilities.

5 So that the basic comments that I have are that,
6 you know, in terms of the research that's done under these
7 permits, we ought to maybe get a little more clarity as to
8 what the goals of the research are going to be, how we're
9 going to determine the goals, and then how we're going to
10 judge those goals. Because the federal rules are very
11 clear that if a facility is not meeting its goals, we've
12 got to decide whether it needs to continue or not.

13 And I think we ought to make sure that, as, you
14 know, Mr. Liss suggested or CIW suggested I think, that if
15 we're going getting research, we should get research that
16 is truly valuable from these projects so that we can
17 assure that we understand what we need to understand so
18 that we can determine at a future date whether there
19 should be broader applicability of these sorts of
20 projects.

21 And then the second and final thing I wanted to
22 mention was the preprocessing. You know, like the
23 conversion technology regulations, I think that
24 preprocessing is quite appropriate for these facilities
25 and I think it's consistent with the federal rules

1 delegated against the authority to site these facilities.

2 CHAIRPERSON MULÉ: Thank you.

3 Ms. Marin?

4 Nothing.

5 Okay. Howard, do you have anything else on that?

6 Okay. That concludes that item.

7 And we are going to take a 10-minute break. We
8 need to give our court reporter a little break here.

9 So let's plan on being back here at 11:45 sharp.

10 Thank you.

11 (Thereupon a recess was taken.)

12 CHAIRPERSON MULÉ: I'd like to call the meeting
13 back to order.

14 Let me just review with you our schedule for the
15 remainder of the meeting.

16 We are going to hear a Items F, G, I, K, and then
17 L. And then we're going to work right through lunch. Our
18 goal is to finish as quickly as possible. That will then
19 end the Permitting and Enforcement Committee meeting.
20 There will then be a 30-minute lunch break. And then our
21 P&E staff -- Howard will be conducting the post-closure
22 workshop.

23 And so if anybody has any questions on that,
24 that's basically -- that's our schedule for now.

25 So, Howard, if you will, Item F.

1 I'm sorry. Let's call the roll and ex partes.

2 SECRETARY DUCLO: Board Members Marin?

3 COMMITTEE MEMBER MARIN: Aye.

4 SECRETARY DUCLO: Paparian?

5 COMMITTEE MEMBER PAPARIAN: Here.

6 SECRETARY DUCLO: Chair Mulé?

7 CHAIRPERSON MULÉ: Here.

8 COMMITTEE MEMBER MARIN: I'm present. I did not
9 vote for myself.

10 CHAIRPERSON MULÉ: Any ex partes?

11 COMMITTEE MEMBER MARIN: Nothing to report. I'm
12 up to date.

13 COMMITTEE MEMBER PAPARIAN: None.

14 CHAIRPERSON MULÉ: I just have two. I spoke to
15 Mike Gotch and Gary Liss.

16 Okay. Howard, Item F.

17 DEPUTY DIRECTOR LEVENSON: Okay, Madam Chair.

18 And we do have -- of the five permits, four of
19 them should be relatively quick to handle, I hope.

20 Item F is consideration of a new Full Solid Waste
21 Facilities Permit, specifically a compostable materials
22 handling facility, for the Cold Canyon Landfill Green
23 Material Compost Facility in San Luis Obispo County.

24 And as you know, the Board just became the
25 enforcement agency for the county beginning July 1st. So

1 this is the first permit under that new authority and that
2 program.

3 Jeff Hackett is going to make the presentation on
4 that item.

5 MR. HACKETT: Good morning.

6 Cold Canyon Landfill Green Material Compost
7 Facility is an existing compost facility that is currently
8 operating under a standardized composting permit issued on
9 February 28th, 2002.

10 Since standardized composting permits are no
11 longer available for this type of facility, the operator
12 was required to apply for a new solid waste facilities
13 permit to incorporate proposed changes in the design and
14 operation of the facility.

15 The proposed changes include: Reconfigure the
16 permitted 12 acre operations area; increase the design
17 capacity from 45,000 cubic yards to 57,025 cubic yards;
18 and increase the daily tonnage from 200 tons per day to
19 300 tons per day.

20 In summary, Board staff has made the following
21 findings: CEQA has been complied with; the facility's
22 design and operation are consistent with state minimum
23 standards; and the facility is in conformance with the San
24 Luis Obispo County Nondisposal Facility Element.

25 The Board's Enforcement Agency Section has

1 reviewed the supporting documentation and prepared a
2 proposed permit and determined that permit and supporting
3 documentation are acceptable for the board's consideration
4 of concurrence.

5 In conclusion, staff recommends the Board adopt
6 Resolution Number 2004-304, concurring in the issuance of
7 Solid Waste Facilities Permit Number 40-AA-0017.

8 Sean Edgar of Edgar and Associates is present on
9 behalf of Cold Canyon Landfill, Incorporated, to answer
10 any questions you may have.

11 This concludes my presentation. And I'm also
12 available to answer any questions you may have.

13 CHAIRPERSON MULÉ: Thank you.

14 Are there any questions?

15 Any questions?

16 Do I hear a motion?

17 COMMITTEE MEMBER MARIN: Move approval of
18 Resolution 2004-304.

19 COMMITTEE MEMBER PAPARIAN: Second.

20 CHAIRPERSON MULÉ: We have a motion to approve
21 and seconded.

22 Could you call the roll, Donnell.

23 SECRETARY DUCLO: Board members Marin?

24 COMMITTEE MEMBER MARIN: Aye.

25 SECRETARY DUCLO: Paparian?

1 COMMITTEE MEMBER PAPARIAN: Aye.

2 SECRETARY DUCLO: Chair Mulé?

3 CHAIRPERSON MULÉ: Aye.

4 And that item will go on consent.

5 Thank you.

6 Next item.

7 DEPUTY DIRECTOR LEVENSON: Item G is
8 consideration of a revised Full Solid Waste Facilities
9 permit for the West Contra Costa Sanitary Landfill in
10 Contra Costa County.

11 Bea Poroli will be making that presentation.

12 MS. POROLI: Good morning.

13 The proposed permit is to allow for the
14 following: Increase the elevation; increase traffic
15 volume; the addition of a wet waste pottering material,
16 soil reclamation, and a biosludge dredging material
17 spreading operation; change in the remaining disposal
18 capacity; and change the closure date.

19 The agenda item was updated on December 2, 2004.
20 The updated agenda item now reflects that all the
21 requirements have been met as indicated on page 25-4 of
22 the item.

23 In conclusion, staff recommend that the Board
24 adopt Solid Waste Facility Permit Decision Number
25 2004-305, concurring in the issuance of a Solid Waste

1 Facility Permit number 07-A A-001.

2 Representatives of the LEA and operator are
3 present to answer any questions you may have.

4 This concludes staff's presentation.

5 CHAIRPERSON MULÉ: Thank you.

6 Are there any questions from either Board member?

7 No.

8 Do I hear a motion to approve?

9 COMMITTEE MEMBER MARIN: Move approval of
10 Resolution 2004-305.

11 COMMITTEE MEMBER PAPARIAN: I'll second that. I
12 think that's the revised resolution in our binder.

13 CHAIRPERSON MULÉ: Yes, it is.

14 And, Donnell, if we could substitute the previous
15 roll.

16 And this item will also be on consent for the
17 full Board next week.

18 Okay. Moving right along, we have Item I.

19 Howard.

20 DEPUTY DIRECTOR LEVENSON: Madam Chair, with your
21 indulgence I'd like to switch the order of these two
22 permits prior to Item L, in the hopes that the LEA might
23 get here on time for Item I.

24 So we would go to K and then go back to I.

25 Item K is consideration of a new Full Solid Waste

1 Facilities Permit for the El Nido Composting Facility -
2 Synagro West in Merced County.

3 PERMITTING & INSPECTION BRANCH MANAGER de BIE:

4 Mary, I guess you're up.

5 Mary Madison-Johnson will make the staff
6 presentation.

7 PERMITTING & INSPECTION BRANCH SUPERVISOR

8 MADISON-JOHNSON: Excuse me, members. I was expecting my
9 staff to be here. So let me get to the item.

10 This is an existing facility. It's permitted
11 currently under a registration permit. However, the
12 facility has never started operation.

13 This permit will allow -- turn it over Erica.

14 PERMITTING & INSPECTION BRANCH MANAGER de BIE:

15 Thank you. I guess we didn't get the message
16 fully to staff about changing the schedule. So Erica will
17 follow through. Thank you.

18 MS. WEBER: This is an existing compost facility
19 currently permitted via standardized permits. The
20 facility never began operation.

21 The proposed permit would allow 355 tons per day
22 of agricultural liquids, green material, and sewage sludge
23 waste types. Sewage sludge is generated during the
24 treatment of domestic sewage.

25 The source of feed stock will be from the Central

1 Valley, but may extend to the Bay Area or other areas,
2 depending on market conditions and customer needs.

3 At the time this agenda item was written, a
4 finding was outstanding regarding conformance with the
5 county integrated waste management plan. Staff is still
6 analyzing the package regarded conformance.

7 Board staff will make a recommendation of
8 concurrence at the December Board meeting if the
9 conformance finding can be made.

10 The LEA and operator are available to assist me
11 in responding to any questions you may have.

12 This concludes staff's presentation.

13 CHAIRPERSON MULÉ: Are there any questions
14 from -- yes, Mr. Paparian.

15 COMMITTEE MEMBER PAPARIAN: Yeah, I guess we'll
16 hold off on voting because we don't have the conformance
17 finding yet.

18 But in reading this, it appears just because of
19 the history of the facility, there was no public hearing
20 recently on the permit. Presumably at some point in
21 time -- looks like maybe like ten years ago there was a
22 public hearing, or do we know that?

23 PERMITTING & INSPECTION BRANCH MANAGER de BIE:

24 Mark de Bie with Permitting & Inspection Branch.

25 It's staff's understanding that approximately

1 1994-'95 the regional water quality control board
2 processed a negative declaration for a project that's very
3 similar to this one. And that would have involved public
4 noticing of the documentation and conceivably a hearing at
5 the regional board to approve DWR's. But there were no
6 hearings that staff is aware of relative to the solid
7 waste facility permit that was previously in place for a
8 similar operation as well as this new permit under the
9 full permit.

10 COMMITTEE MEMBER PAPARIAN: Do we know if the
11 neighbors are just aware that this is happening?

12 MS. WEBER: I can ask.

13 PERMITTING & INSPECTION BRANCH MANAGER de BIE:

14 That might be a good question for both the LEA as
15 well as the applicant.

16 MR. CRONK: Brent Cronk, Merced County LEA.

17 There are no very close neighbors. The closest
18 neighbor is nearly a mile away. He also happens to be
19 down wind of the prevailing wind. Mr. David Baker was
20 informed of the project. He did go with LEA staff down to
21 southern California to tour a couple of currently
22 operating Synagro facilities. So he rode all the way down
23 with us, all the way back. So he is aware of the project.

24 COMMITTEE MEMBER PAPARIAN: Do you know, is he
25 comfortable or do you --

1 MR. CRONK: He was not comfortable before we
2 went. He had a lot of questions. After we got back he
3 said -- he indicated that he didn't have a problem with
4 the project.

5 COMMITTEE MEMBER PAPARIAN: Okay. Thank you.

6 CHAIRPERSON MULÉ: And I do -- if you could
7 just -- yeah, I just had one question for you, because --
8 and it's related to basically what Mike was asking, is:
9 How does the LEA and the operator plan to handle any
10 odor-related issues?

11 MR. CRONK: We have an extensive odor-management
12 plan as part of the RCSI. And because of the nature of
13 the area with -- it's all agriculture -- Mr. Baker
14 actually has submitted an application to have a dairy at
15 his location. There's a lot of dairies in Merced County.
16 So we don't foresee a particular air issue -- odor issue.

17 CHAIRPERSON MULÉ: Okay. Thank you very much.

18 So, Howard, I guess we will have to defer on
19 this.

20 DEPUTY DIRECTOR LEVENSON: Yes, Madam Chair,
21 unless you wish to forward it with a recommendation that
22 it be contingent upon the --

23 CHAIRPERSON MULÉ: Okay. Let's do that.

24 -- the CIWMP conformance.

25 COMMITTEE MEMBER MARIN: That's what we'll do.

1 Thank you.

2 COMMITTEE MEMBER MARIN: So how do we do that?

3 Do we move approval --

4 COMMITTEE MEMBER PAPARIAN: Yeah, I think it's a
5 recommendation from the Committee for the Board to approve
6 if the CIWMP comes through properly. So it probably needs
7 to be on the Board agenda with the recommendations or a
8 very quick presentation.

9 CHAIRPERSON MULÉ: Right. So we will put -- this
10 will be forwarded to the full Board.

11 Thank you.

12 Okay. Next item.

13 DEPUTY DIRECTOR LEVENSON: Thank you, Madam
14 Chair.

15 Item I is consideration of a revised Solid Waste
16 Facilities Permit for the Ridgecrest Sanitary Landfill in
17 Kern County.

18 Chris Deidrick will be making this presentation.

19 MR. DEIDRICK: Good morning, Madam Chair,
20 Committee members.

21 The Ridgecrest Sanitary Landfill was issued its
22 last permit on May 8th, 1997. And the facility is owned
23 and operated by the Kern County Waste Management
24 Department.

25 The changes in the proposed permit are as

1 follows:

2 A change in hours of operation; a change in the
3 closure date from 2012 to 2014.

4 A change in the owner of the property. That has
5 already -- that transaction has already taken place. The
6 property used to be owned BLM, and now it's owned by Kern
7 County Waste Management.

8 A change in maximum elevation from 2,575 feet to
9 2,572 feet.

10 And a change in the maximum depth -- or the
11 minimum depth of the landfill from 2500 to 2,460 feet sea
12 level.

13 For your information, the facility has had
14 ongoing violations for significant change and
15 noncompliance with state minimum standards -- or, pardon
16 me -- terms and condition of the permit. Both these
17 violations will be corrected if the Board concurs in the
18 issuance of the proposed permit and subsequently the LEA
19 issues the permit.

20 One thing was just brought to my attention, and
21 it was something that I overlooked. The financial
22 assurance was approved by our Financial Assurance Office.
23 And actually it went through November Board meeting. It
24 didn't go through this December Board meeting.

25 So I was just talking Richard Castle. And

1 there's one little glitch here. It will be prepared for
2 the Board meeting. So I guess what we're asking is that
3 this be extended to the Board meeting and that we don't
4 take an action at this point.

5 PERMITTING & INSPECTION BRANCH MANAGER de BIE:

6 If I may clarify a little bit. When the item was
7 written -- and we write these a number of weeks before the
8 Committee -- the documentation was in place. But as Chris
9 has indicated, there was an anniversary date that has come
10 and gone. And the county has not updated that
11 information. So right now today, we don't have
12 documentation that they are fully in compliance. So we
13 anticipate that they will submit that sooner than later
14 and hopefully between now and the word meeting, however if
15 they do fail to submit it, then we would have to recommend
16 nonconcurrence because they would not meet those
17 requirements.

18 So we would suggest that, given that new
19 information relative to that anniversary date, that the
20 Committee hold off on making a recommendation to the Board
21 on this item. And we'll wait and see what happens.

22 CHAIRPERSON MULÉ: And that's what we will do.
23 We by move this item forward to the full Board.

24 COMMITTEE MEMBER PAPARIAN: Madam Chair, Can I
25 ask a couple questions about this?

1 CHAIRPERSON MULÉ: Yes.

2 COMMITTEE MEMBER PAPARIAN: This one was
3 troubling to me on a couple of levels. When I counted up,
4 if my addition is right, there were 72 state minimum
5 standard violations in six years and plus 33 permit
6 violations in six years.

7 And this is a county-owned facility and a county
8 LEA, which raises a red flag to me. If this was a private
9 facility run someplace else in the state, I can't believe
10 that we would let them get away with 72 state minimum
11 standard violations without some stronger enforcement
12 action. And so I mean I think our staff really needs to
13 take a look at this situation, because I think it's very
14 important and it's part of the goals that we've always
15 stated that we should have consistent enforcement
16 throughout the State. And just looking at the types of
17 violations, it's hard to believe that a private facility
18 somewhere wouldn't have been subjected to some stronger
19 enforcement action than has taken place here.

20 Some of the standards violations are chronic,
21 they're consistent over time. And they seem to have to do
22 with how the facility is being operated. And I'm not
23 seeing in the permit any indication of requirements for
24 the operator to do things differently, to get training, to
25 do something to correct what is a fairly consistent

1 problem over time of operating the landfill properly.

2 So what we're required to do in evaluating a
3 permit is, if we don't think the permit's going to -- or
4 if we think the permit's going to result in state minimum
5 standards violations, we have a duty I think to reject it.
6 And I'm looking at the history here. And I'm thinking,
7 with 72 violations in six years, I don't know if -- I
8 don't believe it's going to go down to zero unless I see
9 some more evidence that, you know, something's going to be
10 handled differently at this facility.

11 So I don't know if you want to respond to that,
12 Howard, or if I -- I'm venting after having read this and
13 I'm very concerned about this facility.

14 DEPUTY DIRECTOR LEVENSON: We certainly
15 understand your concern, Mr. Paparian.

16 The operator is here, if you'd like to ask the
17 operator as to how they're addressing some of these
18 violations.

19 The LEA is on their way, but may not make it.
20 And as we noted in the item, this is an LEA performance
21 issue. They are under -- scheduled to undergo an LEA
22 evaluation beginning December 20th, which will include the
23 previous three years. So this will certainly be addressed
24 as part of the LEA evaluation process.

25 But you may want to ask the operator how they're

1 planning to address these violations that have occurred in
2 the past and correct those. And then we could have this
3 discussion again at the Board meeting with the LEA.

4 MR. DEIDRICK: Would you like the operator to
5 step up at this time?

6 CHAIRPERSON MULÉ: Yes, that would be helpful,
7 because I too have some serious concerns with the
8 compliance history of this particular facility and the
9 fact of the -- that there seems to be, in my opinion, very
10 little enforcement action taken on the part of the LEA.

11 And my other question too is is what is the
12 Board's role with the LEA enforcement? What type of
13 authority do we have over the LEA in terms of
14 enforcement -- of their enforcement activities?

15 Thank you.

16 MR. DEIDRICK: Okay. This is Nancy Eort of the
17 Kern County Waste Management Department.

18 CHAIRPERSON MULÉ: Thank you, Nancy.

19 MS. EORT: Good afternoon. My name's Nancy Eort.
20 I'm the Technical Resources Manager for the Kern County
21 Waste Management Department.

22 Yes, we have had some permit violations over the
23 last several years. Those permit violations have been
24 things -- change in days and hours. We purchased the
25 property from Bureau of Land Management several years ago.

1 And those were issues that we needed to resolve.

2 Kern County owns 14 landfills. Currently 7 of
3 those landfills are open and 8 of those are closed. And
4 they've all closed in recent years.

5 And so as the Waste Management Department has
6 been working on a number of different issues. Closure
7 plans, we only have so many limited resources. And so
8 working with our LEA we have gotten to the process now of
9 working with Ridgecrest.

10 The Ridgecrest Landfill, some of the state
11 minimum standard violations have been issues such as
12 stockpiling of ground wood waste material that was on
13 site. Ridgecrest is an area that's very, very dry. We
14 actually don't get much wood waste into that area, into
15 that landfill. But we did have stockpiling of materials.
16 We had to get a contract with a company to come on and
17 handle that wood waste. We had a contact to grind it, but
18 not to take it offsite.

19 And so those were some issues that had to be
20 resolved, and those issues have been resolved.

21 In fairness to our LEA, we have worked through
22 the processes with them. They are aware of the issues and
23 they have been looking for consistent progress on each of
24 these.

25 Some of the issues were not so easily resolved.

1 A couple months ago when we first came forward I believe
2 in June for our permit, we had issues with our water well
3 with siltation. And we were actually trucking water on to
4 the site. And with landfills those issues take awhile to
5 resolve. But we have gotten them resolved. We have no
6 permit violations currently. It is our goal not to have
7 permit violations or operating violations. But they do
8 occur. And at this site they have all been cleared up.

9 COMMITTEE MEMBER PAPARIAN: One of my concerns,
10 there's a history on some of these like grading and --
11 grading and kind of the basic operation of the landfill
12 that is fairly consistent over time. And including most
13 recently in August 25th our staff went to the facility and
14 noticed a grading and fill and daily cover problems. And
15 daily cover problems date back to 1999 in our report. And
16 grading fill is scattered through the years. And to me
17 that indicates, you know, more than a paperwork type of
18 thing. It relates to the training, the operation, the
19 commitment to operating a good facility.

20 MS. EORT: One of the challenges that Kern County
21 faces, it is the goal of our Board of Supervisors that the
22 Waste Management Department contract out operations. That
23 causes a number of issues and a number of challenges for
24 our department.

25 And with the Ridgecrest Landfill in specific we

1 did have issues with our operator, and we had to change
2 operators in the course of this time. We do require our
3 own staff, our own managers, and our operators to have
4 MOLO training through SWANA to make sure that they are
5 familiar with the proper operating procedures.

6 But we do have issues from time to time. And
7 this basically took a change in contractors to resolve
8 this issue.

9 COMMITTEE MEMBER PAPARIAN: When did that happen?

10 MS. EORT: I believe that happened about 18
11 months ago.

12 COMMITTEE MEMBER PAPARIAN: Okay. But there were
13 still problems after that. So that --

14 MS. EORT: That's correct, there was problems
15 after that. And our contractor now is getting ready to
16 turn in his contract. So we'll be moving forward with
17 another new contract in about six months.

18 But this is one of the things, that Ridgecrest in
19 proximity to Bakersfield is about a two-hour drive, and
20 our resources and our staff are limited.

21 We have inspectors and staff on-site weekly. But
22 we do have issues and we have had issues with the
23 contractor, and we are changing those things.

24 COMMITTEE MEMBER MARIN: Madam Chair.

25 I am grateful that you're here today, Nancy. And

1 it really -- I appreciate the fact that you're explaining
2 to us the challenges you faced in dealing with this. You
3 can tell it's very important to us. I mean we're here to
4 allow you to continue to do your job. But the concerns
5 that are expressed are real. And I think that you have
6 already gotten that message. So we would expect your
7 compliance. And I'm sure that they're going to work even
8 harder to get everybody trained to make sure that they
9 realize what the standards are and that they meet the
10 minimum.

11 MS. EORT: We will be doing that.

12 COMMITTEE MEMBER MARIN: Thank you.

13 CHAIRPERSON MULÉ: Thank you.

14 Then, Howard, what I'd like to do is move this to
15 the full Board for consideration.

16 DEPUTY DIRECTOR LEVENSON: And we will request
17 that the LEA be present at the full Board. And we also
18 can, if you wish, at that time go into more on the LEA
19 evaluation and our own authorities regarding LEA
20 performance.

21 CHAIRPERSON MULÉ: I think that would be very
22 helpful. Thank you.

23 Okay. Next item, Item L.

24 DEPUTY DIRECTOR LEVENSON: Next item, Item L,
25 consideration of a new Full Solid Waste Facilities Permit,

1 disposal facility, for the Gregory Canyon Landfill in San
2 Diego County.

3 Before we go into the staff presentation on that,
4 I do want to acknowledge that the LEA and the applicant
5 and major organizations in opposition to this are planning
6 to provide you with presentations. Some of them have
7 PowerPoint presentations that have been coordinated with
8 Deb McKee for screening.

9 So the order of the presentations: We'll have a
10 staff presentation by Tad Gebre-Hawariat, and then the
11 LEA, then the applicant, and then the opponents, in terms
12 of formal presentations; and then back to you to
13 adjudicate further discussion and other speakers.

14 So we're going to focus on the staff report. And
15 we'll just get into it. And I'll turn it over to Tad.

16 MR. GEBRE-HAWARIAT: Good afternoon.

17 The proposed Gregory Canyon landfill site is
18 located in northern San Diego County, approximately two 2
19 miles southwest of the community of Pala.

20 The landfill project got its initial start when
21 in a general election on November 8, 1994, the voters in
22 San Diego County approved a ballot measure known at the
23 County of San Diego Proposition C.

24 The proposed new permit would allow the
25 following:

1 The construction and operation of a Class 3
2 municipal solid waste landfill on an area of 308 acres,
3 with a 183 acre disposal footprint.

4 The permitted design capacity, that is for refuse
5 and cover, is calculated at 57.5 million cubic yards. And
6 the estimated site life at 30 years.

7 The permitted hours of operation for receipt of
8 waste at the landfill will be six days per week, from 7
9 a.m. to 6 p.m. Monday through Friday, and 8 a.m. to 5 p.m.
10 on Saturdays.

11 Refuse will be accepted at the new landfill at
12 the rate of the following permitted maximums: An average
13 of 3,200 tons per day; a peak daily of 5,000 tons per day;
14 and the permit specifies an annual cap of one million
15 tons.

16 The operation of the proposed landfill is also to
17 include recycling activities where source separated
18 recyclable materials such as white goods, paper and glass
19 would be accepted.

20 As we have indicated in the table on page 30-7 of
21 the agenda item, all of the requirements for the standards
22 that the Board is required to make by Public Resource Code
23 Section 44009 have been met.

24 Additionally, the LEA as the lead agency for CEQA
25 prepared an environmental impact report, or an EIR,

1 certified the document on February 6th, 2003, and made all
2 the required findings and filed a notice of determination
3 on June 2nd, 2004.

4 Also on June 2nd, 2004, Mr. Gary Erbeck, the
5 Director for the San Diego County Department of
6 Environmental Health, approved the project and adopted a
7 statement of overriding consideration for five
8 environmental effects that cannot be mitigated or
9 substantially lessened and remains significant and
10 unavoidable.

11 The five environmental effects are: Traffic and
12 circulation, air quality, ethnohistory and native American
13 interests, aesthetics and noise.

14 In adopting the statement of overriding
15 consideration, the LEA directly cited is the assistance
16 that the Gregory Canyon Landfill would provide towards the
17 15 years of landfill capacity for the county and its
18 contribution towards the implementation of the draft
19 siting element as it pertains to the jurisdiction's
20 disposal capacity.

21 The LEA indicated that a series of new project
22 features have been incorporated after June 2nd, 2004. On
23 October 8, 2004, the Director of the LEA adopted a
24 supplemental statement of overriding considerations, and
25 filed a notice of determination with the Office of

1 Planning and Research on October 11th, 2004.

2 The supplemental statement of overriding

3 considerations references the following benefits:

4 Enhanced liner system; irrevocable offer to contribute up

5 to \$1 million to CalTrans for safety improvements along

6 State Route 76 in the vicinity of the landfill; the

7 construction of the landfill project will generate

8 economic benefits; the operation of the landfill will

9 generate significant economic benefits; and the operation

10 of the landfill will generate increased property taxes and

11 sales taxes.

12 Staff have reviewed the CEQA documentation and

13 the LEA/CEQA findings and the final EIR and findings made

14 pursuant to CEQA guidelines Section 15091 to be adequate.

15 Mr. Mark de Bie will now discuss recent

16 correspondence received and the options for the Board

17 outlined in the agenda item.

18 PERMITTING & INSPECTION BRANCH MANAGER de BIE:

19 Thank you, Tad.

20 Mark de Bie with Permitting and Inspection

21 Branch.

22 Since this proposed permit has been received by

23 the Board and the staff report has been made public, staff

24 has received an avalanche of correspondence, and we're

25 slowly getting through them bit by bit. So I wanted to

1 give you a status of where we are in that analysis.

2 A lot of our focus has been put into looking at a
3 letter signed by Mr. Griswold, a November 30th letter,
4 which was a 60-plus letter with attachments, that brought
5 up many, many issues. And I'll try to summarize them.
6 And I'm not trying to characterize them, just provide you
7 a summary of them.

8 There were statements made about the adequacy of
9 the JTD, the joint technical document, which is the
10 supporting document for the permit. Statements about
11 incomplete financial assurance documentation, the adequacy
12 of the permit conditions, and conformance finding. And
13 all of these are sort of -- we're sort of grouping
14 relative to those items in 44009, which points to the
15 Board's authority relative to approving permits.

16 Relative to the JTD questions that have been
17 raised, we have asked our technical staff, our engineers
18 on staff to look again at the JTD and make an assessment.
19 And we have an initial response back from them, a draft
20 response indicating that it is still their opinion that
21 that document is adequate. However, they've identified a
22 few things that could improve upon it. But for all
23 intents and purposes, they find that it meets the
24 requirements.

25 Relative to the financial assurance

1 documentation, we have a memo that was just generated
2 today and provided Permit staff from our Financial
3 Assurance Group, indicating that they do not see any
4 problems relative to the financial assurance issues
5 raised, in their opinion.

6 The permit conditions -- a number of issues were
7 raised relative to the permit conditions. I'll just make
8 the Committee aware again that many of those conditions in
9 the permit draw directly from the CEQA document and the
10 mitigation monitoring reporting plan. And so sort of
11 statements about the permit conditions staff is viewing as
12 also statements relative to that plan, that mitigation
13 plan. So we're looking at both the plan and those
14 conditions specifically.

15 Relative to the conformance finding, we had
16 confirmed again that -- it's staff's opinion that that
17 requirement in 44009 is solid still and there aren't any
18 issues relative to that.

19 Moving on to another group of issues that have
20 been raised: Questions about the adequacy of the
21 statement of overriding considerations and the supplement
22 to that statement; as well as the Board's role looking at
23 feasible alternatives. So we're looking at both of those;
24 especially with the alternatives, looking at the
25 no-project alternative. So that's still a work in

1 progress to re-examine that and staff's initial findings
2 relative to that given the new information provided.

3 There were issues raised or questions raised
4 relative to Proposition C. And as Tad indicated, that's
5 where this project got its sort of formal public start, is
6 with Proposition C. A number of inconsistencies have been
7 identified by the letter -- the November 30th letter
8 relative to the permit and the Proposition C relative to
9 acreage, borrow area, and whether recycling is an aspect
10 of this project or not. So staff's looking at that
11 question in a specific sense, the details, the numbers; as
12 well as a broader sense relative to the Board's role
13 relative to Proposition C.

14 We do discuss in the agenda item the Proposition
15 C question and we're seeing if we need to provide the
16 Board additional details in that area.

17 In addition to this very extensive letter with
18 lots and lots of issues, we've also received numerous
19 correspondence from lots of different organizations,
20 including the Sierra Club and River Watch and the
21 Environmental Health Coalition, representatives from the
22 City of Oceanside Water Utility Department and others.
23 I'm not naming them all, but we have received others. And
24 at least 75 to 80 individual -- correspondence from
25 individuals.

1 And we have received in the last day or two a
2 package from the local enforcement agency of
3 correspondence that they've received, and they passed it
4 on as required by our regulations. So we have those too.

5 So where we are with looking at all this
6 information being provided by the public and other
7 concerned citizens is that staff is still reviewing and
8 researching the information and concerns raised. And,
9 again, we've asked technical staff to go back and
10 re-examine their initial findings relative to the joint
11 technical document, the final EIR, the mitigation
12 monitoring reporting plan, financial assurance. And,
13 again, we have some initial responses back from some of
14 those. Statement of overriding considerations as well as
15 the permit and the permit conditions. So we're looking
16 again relative to this information to all of this in front
17 of us.

18 So until staff has had an opportunity to check
19 and thoroughly discuss the issues raised, we don't feel
20 we're in a position at this time to provide the Committee
21 or the board a definitive recommendation. So it's a work
22 in progress. And we hope -- and if we can give Tad some
23 overtime as well as our technical experts to maybe have
24 something better for the Board or to discuss.

25 So that ends our presentation.

1 CHAIRPERSON MULÉ: Okay. Mr. Paparian, you have
2 a question?

3 COMMITTEE MEMBER PAPARIAN: Yeah, a quick
4 question now. I might have some more later in terms of
5 things I'd like to get some attention to.

6 But we have in our packet one resolution but two
7 somewhat different decisions to make. And in the past I
8 know that we've had a separate resolution on CEQA at times
9 from the permit resolution. Are we going to see this
10 split into two resolutions?

11 PERMITTING & INSPECTION BRANCH MANAGER de BIE:

12 If I may make a first shot relative to past
13 practice. Certainly when the Board's been a lead agency
14 for a project there's been two resolutions: One that
15 captures the Board's role as a lead agency and the CEQA
16 responsibilities; and then a second resolution to actually
17 approve the project, be it a set of regs or something
18 else.

19 AS a responsible agency approving a permit, to my
20 knowledge, as staff, we've pretty much always put forward
21 one resolution that captures both the CEQA determinations,
22 whereas as well as the approval. So following that
23 pattern, staff's initial take was to provide yet again one
24 more resolution. This resolution is different -- this
25 draft resolution is different in that we've provided sort

1 of fill-in-the-blank opportunities for the Board to create
2 and expand upon the whereas's specifically in the CEQA
3 area.

4 So, again, if my experience we've usually, if not
5 always, put forward one resolution for permit items, so
6 we're not differing in that. But we do agree there are --

7 COMMITTEE MEMBER PAPARIAN: Is there any reason
8 why --

9 PERMITTING & INSPECTION BRANCH MANAGER de BIE:
10 -- decision that need to be made.

11 COMMITTEE MEMBER PAPARIAN: Any reason why we
12 couldn't split this in two?

13 Yeah, I think there are -- I mean there's -- in
14 my mind there's, you know, differences in both the types
15 of things we're looking at in terms of CEQA and in terms
16 of the permit. There's also different voting requirements
17 for the Board on each one.

18 PERMITTING & INSPECTION BRANCH MANAGER de BIE:
19 I'll defer to Legal staff to indicate the
20 possibilities.

21 STAFF COUNSEL BLEDSOE: Madam Chair. Michael
22 Bledsoe from the Legal Office.

23 There's no reason we could not do this in two
24 resolutions.

25 What Mark explained is correct. The Board as a

1 responsible agency does not have to certify that the EIR
2 was prepared in compliance with CEQA. But we still have
3 some important CEQA-related decisions to make. So two
4 resolutions would be perfectly acceptable.

5 COMMITTEE MEMBER PAPARIAN: Yeah, and I think,
6 given the controversy with this permit, I would urge --

7 COMMITTEE MEMBER MARIN: There's controversy?

8 COMMITTEE MEMBER PAPARIAN: A little bit.

9 (Laughter.)

10 COMMITTEE MEMBER PAPARIAN: I think it would be
11 important to do that, because I think again there are
12 different types of things in each resolution and different
13 requirements on each resolution.

14 PERMITTING & INSPECTION BRANCH MANAGER de BIE:

15 If it's the direction of the Committee, staff can
16 certainly look at the current resolution and potentially
17 pull out those elements that are relative to the Board's
18 role as responsible agency and then those specifically
19 relative to the approval of a permit under 44009. But
20 We'll seek your direction before we do that.

21 CHAIRPERSON MULÉ: I guess I have a question on
22 our history of doing that. Do we -- is that a normal
23 procedure? I mean do we normally do that?

24 PERMITTING & INSPECTION BRANCH MANAGER de BIE:

25 Again, my experience for permits, no, we've

1 usually done it with one resolution.

2 CHAIRPERSON MULÉ: So we've never done two
3 resolutions?

4 PERMITTING & INSPECTION BRANCH MANAGER de BIE:
5 For permits, no.

6 COMMITTEE MEMBER PAPARIAN: We've done it where
7 we've been the lead agency. And I don't recall that we've
8 had anything that's been at this level of controversy,
9 where we've had the CEQA mixed in with the rest of the
10 permitting.

11 And, again, I think it's awkward because there's
12 two different types of things we're supposed to be doing.
13 And the staff should just direct us to do one type of
14 review for the CEQA, a different type of review for the
15 permitting.

16 COMMITTEE MEMBER MARIN: Madam Chair, if I may.

17 One of the things that I think is very important
18 is that -- I feel very uncomfortable doing things that we
19 have not done before. And I understand this is something
20 totally different. But I think that it would behoove us
21 to continue the tradition that this Board has followed
22 consistently. And, you know, there are six Board members.
23 So I know we're going to the Board on this completely.
24 But it seems to me that we must continue to do what we've
25 always done for all permits. And the merits of each

1 permit are -- they need to be based -- the decisions that
2 we make need to be based on the merits of each permit.
3 And so, you know, whatever the Board decides at that time
4 will be the case. But I will have -- I would caution us
5 to do something different. There have been controversial
6 items before. So why should we do it differently?

7 COMMITTEE MEMBER PAPARIAN: And if I could answer
8 that.

9 I think the reason that we should do it
10 differently is we have two sets of standards. CEQA -- the
11 law under CEQA applies one set of standards. And in terms
12 of the outcome of the resolution, there's different voting
13 requirements actually applicable to a CEQA-related
14 resolution as there is to a permit-related resolution.

15 So --

16 COMMITTEE MEMBER MARIN: I understand that.
17 You've already said it three times.

18 COMMITTEE MEMBER PAPARIAN: Right. We're mixing
19 apples and oranges in the same resolution. And I'm
20 concerned about doing that.

21 I think where we've been the lead agency where we
22 have split the resolution, you know, there is a pattern
23 there. And where we, you know, need to be absolutely
24 clean under CEQA, we've split that resolution when the
25 lead agency's -- we've been the lead agency.

1 Because we're the responsible agency here, on a
2 very controversial item with a lot of public attention, I
3 think it's important to do the same thing we've done with
4 a lead agency.

5 COMMITTEE MEMBER MARIN: This is not the only
6 controversial item that this Board has faced. We have had
7 many other controversial items, and this Board has
8 consistently done it under one.

9 And, you know, it's going to come to the full
10 Board anyways. The Board will vote on either one item or
11 two items. But I believe that at this point in time there
12 is no reason for us to separate that.

13 CHAIRPERSON MULÉ: Excuse me. Does staff have
14 any response?

15 PERMITTING & INSPECTION BRANCH MANAGER de BIE:
16 I always have a response. So --

17 DEPUTY DIRECTOR LEVENSON: We would await your
18 direction. At this point we will move forward with the
19 item as its written, with the additional information that
20 Mark's talked about staff looking at over the next week.
21 And if we're directed at either here or at the Board
22 meeting to develop two resolutions, we certainly will.

23 CHAIRPERSON MULÉ: Okay. Well, I'm going to
24 weigh in on this. And I agree with Board Member Marin. I
25 am very concerned if we set -- if we deviate from previous

1 practices and put two separate resolutions out at this
2 point in time. I think that -- we still have the
3 opportunity to do that at the full Board meeting. But I
4 am not inclined to do that at this point in time.

5 So with that, I'd like to move forward on our
6 presentations. We do have a presentation from several
7 groups.

8 The first group is going to be the LEA and the
9 project proponents. So if you can come up please.

10 Thank you.

11 MR. MILLER: I'm Jack Miller, Manager of San
12 Diego County LEA.

13 I do have a PowerPoint.

14 (Thereupon an overhead presentation was
15 Presented as follows.)

16 MR. MILLER: How about if I go without it.

17 Okay. I'll wing it here.

18 As I indicated, I'm with the San Diego County
19 LEA. And I want to discuss the process by which we
20 pursued CEQA and permit requirements and how we brought
21 this permit to you.

22 We're very pleased that your Board staff have
23 concurred that the permit meets all Title 27 and the
24 Publicly Resources Code requirements. And so we're
25 pleased with their finding on that.

1 Let me talk a little bit about Proposition C.

2 We'll probably hear quite a bit about that.

3 Proposition C was voted on by San Diego County
4 voters ten years ago. By 60 percent they passed it. And
5 Proposition C, what it did is it put in effect the -- it
6 changed -- it amended the general plan. It amended the
7 zoning ordinance, making it a solid waste facility zone
8 for -- specifically for Gregory Canyon. It also requires
9 Gregory Canyon to go through CEQA. It requires certain
10 mitigation measures. And it also established the LEA as
11 the lead agency, which you have acknowledged here today.

12 Proposition B, which was recently passed --
13 actually let me retract that. Proposition B was recently
14 voted on by the voters in San Diego County. And what it
15 would have done, it would have overturned Proposition C
16 and negated the approval for the landfill.

17 It was highly contested. And there was a lot of
18 expense in the county, and on both sides. Sixty-three
19 percent of those voting voted against Proposition B, which
20 meant that the Proposition C still stood.

21 Now, in this case we have two voter-related
22 issues. They're both public comment issues, that the
23 voters in San Diego County said they wanted Gregory Canyon
24 Landfill, 1994 and 2004.

25 In 1999, January 1999 when we put the first draft

1 EIR out, we put it out in seven locations -- public
2 locations. We notified everybody through the press. We
3 had a location where they could obtain a written copy of
4 the EIR. We had a public hearing and a 125 people
5 attended.

6 Following that, revisions -- there were two
7 additional revisions to the EIR. Those were put out in
8 the same way, same distribution. But we also included
9 putting it on the Internet and had CD's available.
10 Another public hearing was held and 103 people
11 participated.

12 As Tad indicated, February 6th, 2003, our
13 Director of the LEA certified the EIR. And staff -- Board
14 staff has concurred that the CEQA findings are sufficient
15 and supported by the Board.

16 Because there were, there are significant impacts
17 that are not mitigable, the project proponent developed a
18 benefits analysis. There would have to be a statement of
19 overriding considerations for a permit to move forward on
20 this project. That benefits analysis and a staff -- LEA
21 staff report was put up on our website, and we invited
22 comments.

23 We got the comments. We put those up on the
24 website. We invited rebuttal comments. And we put those
25 up on the website. We tried to create as transparent a

1 process as possible.

2 We then took all those comments, the benefits
3 analysis, the EIR, all the documentation, the rebuttals,
4 and gave it to the Director of the LEA. He made a
5 tentative conclusion that the benefits of the project
6 outweighed the significant impacts. And we've moved
7 forward in developing the EIR -- excuse me -- in the
8 permit package. So we moved forward at that point in time
9 developing the permit.

10 On June 2nd, when we finished the permit package,
11 the statement of overriding considerations was finalized
12 by the Director, and the permit package was sent to Waste
13 Board staff.

14 The permit is unique, as you have acknowledged,
15 is unique because it includes a lot of mitigation
16 measures. There's 188 mitigation measures from the EIR
17 that have been included in the permit. It ensures
18 enforceability of those conditions.

19 In addition, we've crafted a permit that, because
20 of the complexity and length of it, is phased. There are
21 different phases: Preconstruction, construction. We have
22 organized the mitigation measures so we can find it, so
23 anybody else can find it easily.

24 Plus Gregory Canyon will reimburse the LEA for
25 its costs as oversight agency.

1 In permit development we worked diligently
2 looking for Waste Board requirements, making sure we
3 complied there. EIR, JTD, we looked for conformance with
4 all of that. We hired a consultant to give us advice,
5 make sure that they were consistent.

6 We worked -- we have letters. We received
7 letters as well. We looked at those letters. We made
8 changes to the permit based on those. They actually
9 helped us quite a bit improve the product, our permit.

10 We worked with your Board staff. They made
11 comments. We made changes. And as I said before, your
12 staff has no technical issues or regulatory issues with a
13 permit.

14 When we submitted the permit to this Board, the
15 Board had requested that Gregory Canyon delay the hearing
16 for this issue until after the Prop B vote, which has
17 occurred. They agree. During that time Gregory Canyon
18 made some improvements, enhancements to the project.
19 Those were enhancements that your staff and the LEA staff
20 had recommended. Those -- we revised the permit to
21 include those. And the supplemental statement of
22 overriding considerations reflects some of those
23 enhancements, not all.

24 In summary, the permit meets all mitigation
25 measures, including CEQA, Proposition C, LEA, and other

1 agencies. It meets the Waste Board requirements. There
2 are no unresolved issues. The benefit of the landfill
3 outweigh the significant unmitigable measures. And the
4 voters in San Diego County have voted twice to have this
5 landfill, over 60 percent each time.

6 Given all that, we, the LEA, recommend that this
7 Committee recommend concurrence from the full Board.

8 I want to thank you for this time.

9 CHAIRPERSON MULÉ: Thank you.

10 COMMITTEE MEMBER PAPARIAN: Could I ask the LEA
11 some questions?

12 CHAIRPERSON MULÉ: Excuse me. We have a question
13 for you.

14 Thank you, Mr. Paparian.

15 COMMITTEE MEMBER PAPARIAN: Thank you.

16 Now, in terms of the alternatives, you have
17 several other landfills in the county. I'm wondering what
18 the plans are. Are we going to be seeing plans to expand
19 any of those landfills?

20 MR. MILLER: As I understand, Sycamore Canyon
21 Landfill is in the process of developing an EIR and to
22 expand that landfill.

23 COMMITTEE MEMBER PAPARIAN: Any others? You have
24 Miramar and you have one other, right?

25 MR. MILLER: I know of none in Miramar or no

1 other expansions.

2 COMMITTEE MEMBER PAPARIAN: Okay. If the
3 Sycamore goes through, how much increased capacity would
4 that be?

5 MR. MILLER: I'd have to refer to my notes on
6 that.

7 COMMITTEE MEMBER PAPARIAN: Yeah, maybe we can
8 get the staff to help us develop that information.

9 MR. MILLER: That information is included in the
10 siting element. And we can certainly provide that, and
11 can provide that today for you.

12 COMMITTEE MEMBER PAPARIAN: Do you have a sense
13 of if that expansion were to take place, how many years of
14 capacity there would be for San Diego?

15 MR. MILLER: We can give you that information
16 today.

17 COMMITTEE MEMBER PAPARIAN: Okay. The no-project
18 alternative --

19 DEPUTY DIRECTOR LEVENSON: Excuse me, Mr.
20 Paparian. If you'd like, I can get a quick answer on
21 that. On page 13 of the agenda item notes that the
22 proposed expansion of Sycamore would increase the capacity
23 at that landfill by about 141 million tons.

24 COMMITTEE MEMBER PAPARIAN: Okay. So if that
25 expansion takes place, that would extend obviously the

1 overall capacity in the county by a number of years?

2 MR. MILLER: The combined capacity increase
3 between Gregory Canyon and Sycamore Canyon would take it
4 beyond 2020 capacity. And that's the -- the 2020 was the
5 date -- farthest projected date.

6 COMMITTEE MEMBER PAPARIAN: Okay. The no-project
7 alternative presumably looked at recycling, composting,
8 C&D, other possible alternatives to reduce the need for
9 the facility. What -- now, the Proposition C says I think
10 it's either \$43 or \$45 a ton is the tipping fee back in
11 1994. In terms of the economics of recycling, what did
12 you consider the equivalent tipping fee to be in terms of
13 the economics of recycling? In other words, you know, you
14 can get so much a ton right now for recycling. It
15 competes against landfilling.

16 I didn't see any of that economic analysis in the
17 no-project-alternative discussion. So I'm wondering how
18 you determined the economics of recycling as an
19 alternative to the facility.

20 MR. MILLER: I'd have to refer to that analysis
21 to give some information on it.

22 I believe that there is a cost -- also a CPI
23 that's also included in Proposition C that relates to the
24 landfill fee. So it's a cost -- it's a cost index
25 increaser.

1 COMMITTEE MEMBER PAPARIAN: Okay. So what I'm
2 particularly interested in is how you made the
3 determination that increased recycling was not cost
4 competitive with the landfill or was not a feasible
5 alternative to the landfill.

6 MR. MILLER: I can -- we'll research that and get
7 back to you.

8 COMMITTEE MEMBER PAPARIAN: Okay. And then
9 during the campaign -- the recent campaign for Prop B, I
10 guess a very major component of that campaign was that
11 people should vote no on Prop B so that L.A.'s trash won't
12 come to San Diego. "Say no to L.A. trash. Vote no on
13 prop B."

14 So presumably now that the voters have said no to
15 prop B, there's less of a need for L.A. trash to go to San
16 Diego. In fact the voters bought that they were turning
17 down L.A. trash.

18 In other areas of the state, I'm thinking just up
19 the road, El Sobrante Landfill, there are restrictions on
20 out-of-county waste. Did you put restrictions here on
21 out-of-county waste? Are you going to make sure that L.A.
22 waste doesn't go to the facility?

23 MR. MILLER: No, I'd probably be best to let
24 legal counsel answer that question. Rod Lorang with
25 County Counsel's here to answer that question.

1 MR. LORANG: Through the Chair to Mr. Paparian.

2 The county has no authority to restrict the
3 transport of waste across county boundaries, including
4 waste coming in from L.A. However, my recollection of the
5 campaign is that it was the last day or two when the ad
6 that you're holding there came out. The campaign was
7 somewhere in the neighborhood of \$3 million per side. And
8 my house, I got more than a dozen mailers from the two
9 sides as part of that campaign. It was really quite
10 astonishing. I was aware of that ad only because the
11 newspapers picked it up the day before the vote. I don't
12 think it was a major part.

13 But the answer is, there are no restrictions on
14 trash coming in to L.A. -- from L.A. in to this landfill.
15 There are no restrictions on trash from San Diego going
16 out of the county.

17 The analysis made no assumptions. And in fact we
18 were quite careful to say we do not know how the trash is
19 going to flow if this landfill is built.

20 COMMITTEE MEMBER PAPARIAN: Okay. But --

21 MR. LORANG: So none of the conclusions on which
22 we rely for CEQA purposes or for compliance with state
23 standards depend on any assumption that this trash won't
24 accept L.A. landfill.

25 COMMITTEE MEMBER PAPARIAN: Okay. But it seems

1 like the voters had that -- you know, some portion of the
2 voters -- I guess you could argue how many of the
3 voters -- but some portion of the voters had in mind that
4 by voting no, they were keeping L.A. trash from coming to
5 this facility.

6 MR. LORANG: Mr. Paparian, I have to stop now.
7 The county has been very careful not to involve itself in
8 that campaign. It would be illegal for anybody in the
9 county to have commented on a proposition. We did not do
10 so. We took no position. We've made no comment on what
11 anybody said during the campaign.

12 I mentioned what I know about that ad only
13 because I believe you may have misunderstood its
14 significance in the course of the campaign.

15 Whether the voters understood or not is something
16 on which everybody can make their judgment. But there
17 were two votes, they came out the same way, and by
18 substantial majorities.

19 Thank you.

20 COMMITTEE MEMBER PAPARIAN: Okay. And then I
21 guess for our staff -- again, I guess then we're asking a
22 lot of questions we would like answered to the next week.
23 And apparently County Counsel for San Diego believes it's
24 not possible to restrict Los Angeles trash from coming to
25 San Diego.

1 I'm curious how El Sobrante's able to place any
2 restrictions on their facility and whether, you know, it
3 might be possible to put anything like that into the
4 mitigation measures for this facility.

5 COMMITTEE MEMBER MARIN: Madam Chair, I just have
6 one question for staff.

7 In the history of the Board, is staff aware of
8 any time that the Board has rejected or denied a permit
9 because there is adequate or excess capacity in landfill
10 throughout a region or the State?

11 DEPUTY DIRECTOR LEVENSON: No, ma'am.

12 CHAIRPERSON MULÉ: Thank you.

13 COMMITTEE MEMBER PAPARIAN: Madam Chair, If I can
14 help answer that while I'm chewing a carrot.

15 Where this is different than other permits is the
16 CEQA requirements on us say very clearly that when an EIR
17 has been prepared for a project, the responsible agency,
18 that's the Waste Board, shall not approve the project as
19 proposed if the agency finds any feasible alternative or
20 feasible mitigation measures within its powers that would
21 substantially lessen or avoid any significant impact the
22 project would have on the environment.

23 So we're operating under different rules than we
24 typically operate under. Those different rules do allow
25 us to consider, and in fact they mandate us to consider

1 any feasible alternative or any feasible mitigation
2 measure.

3 CHAIRPERSON MULÉ: Okay. Thank you.

4 Does that conclude the presentation for the LEA
5 and project proponents?

6 MR. MILLER: I think the project proponents want
7 to make a presentation.

8 CHAIRPERSON MULÉ: Okay. If you can come up
9 please.

10 Thank you.

11 And I would like to state at this time that we do
12 have about -- I don't know, I counted I think 20 or 30
13 speaker slips. So if we could just try to move along with
14 this, appreciate it.

15 MR. HUTTON: Good afternoon, Madam Chair, members
16 of the Committee. I'm Bill Hutton. I'm an attorney for
17 Gregory Canyon. I've also been assigned the task of
18 managing the permitting for this facility.

19 I have two people with me today to help answer
20 your questions:

21 First is Mike Zischke with the Law Firm of
22 Morrison & Foerster in San Francisco. Mike is one of the
23 leading CEQA experts in the state, and represents both
24 Gregory Canyon and the county in defending against the
25 CEQA actions that have been filed. He will be able to

1 specifically address the CEQA process questions that had
2 been discussed earlier.

3 And then John Boucher from Bryan Stirrat &
4 Associates. John is a senior technical advisor on this
5 project, the primary drafter of the JTD. And he's also
6 available to answer any questions you might have.

7 I don't have a whole lot to add based upon the
8 presentation of the LEA. So I thought maybe the best way
9 to proceed would be to try to respond to some of the
10 questions from the Committee.

11 First, we agree that this project meets the
12 minimum state standards, meets the requirements of 44009.
13 It's pretty clear. It's really not much in controversy at
14 this point.

15 Gregory Canyon is also unique. I've passed out
16 to the Board a memo from a group called Decision Research,
17 who were the pollsters that we hired with respect to both
18 Proposition C and proposition B. By the way, called this
19 latest election within a few points. And we've seen a lot
20 of the avalanche of correspondence that suggests that
21 voters were misled or confused, because a "yes" vote meant
22 to stop the landfill. What Decision Research did is
23 compare the election results with earlier polling, which
24 looked at what was important to people in deciding which
25 way to vote. And based upon that, their conclusion is

1 this was not a mistake. The people knew what they were
2 voting on and spoke resoundingly in favor of the landfill.

3 In fact, in both 1994 and 2004, every city and
4 every supervisorial district within San Diego County
5 registered their support for this project.

6 You've also seen another thing that's unique
7 about this project is the unprecedented level of review by
8 the LEA, because it was the CEQA lead agency. We've seen
9 public hearings. We've seen, you know, many, many
10 comments, hundreds, if not thousands, of comments on the
11 EIR. We've seen a comment process that lasted really
12 through the last few days and a number of comments were
13 received prior to the initial submittal of the proposed
14 permit back in June.

15 And we've also seen specific addressing of
16 environmental justice concerns that had been raised over a
17 period of years.

18 And what we've gotten out of that is a project
19 that's also pretty unique. For instance, we're the only
20 project that will have a five layer containment system, a
21 double composite liner, which kind of responds to some of
22 the earlier items on the agenda today.

23 Unprecedented level of third party review. The
24 LEA itself confirmed through a third party consultant that
25 the joint technical document was adequate.

1 There will be a construction quality assurance
2 monitor engaged and funded by Gregory Canyon to provide an
3 independent review of liner construction to make certain
4 that it's built and performs the way it's supposed to.

5 The San Luis Rey Water District, who uses the
6 groundwater immediately downstream of this landfill, will
7 be working with us to develop a sampling and monitoring
8 protocol for the landfill once it's built. And they will
9 choose the contractors that perform those services again
10 to provide additional third party input.

11 Finally, as the LEA mentioned, Gregory Canyon
12 will be funding the LEA to provide continuous monitoring
13 of both permit conditions and the project mitigations.

14 We've had a chance to review some of the
15 correspondence. And I know that staff is diligently
16 working through that. We perhaps have the advantage of
17 being around here a little bit longer. And what -- if
18 there's anything gratifying -- and it's interesting I'd
19 use that word -- about the 60-page letter is that there
20 was nothing new of substance. Every single issue has been
21 raised, in fact for the most part prior to the June
22 submittal of the proposed permit. It's been looked at by
23 the LEA and by the Board staff. And it's been addressed
24 and considered before anything came to you. So I think
25 that you as Board members can be assured that really every

1 single conceivable technical issue has been looked at and
2 addressed.

3 I think that says two things: First, that the
4 public participation element of this project has worked.
5 Second, it says a lot about the work that your staff and
6 the LEA has done.

7 With that, I'd like to turn this over to Mr.
8 Zischke for just a very brief comment on the CEQA issues.
9 And then we'll be available to answer questions.

10 Thank you.

11 CHAIRPERSON MULE: Thank you.

12 MR. ZISCHKE: Thank you, Madam Chair, Committee
13 members. My name is Michael Zischke. I'm the Co-chair of
14 the Land Use and Environmental Law Practice Group at
15 Morrison & Foerster. I specialize in the California
16 Environmental Quality Act. And as mentioned, I'm special
17 defense counsel to both San Diego County as well as
18 Gregory Canyon in defending the Environmental Impact
19 Report where an action has currently been filed in San
20 Diego Superior Court.

21 I want to speak very briefly about the CEQA
22 process for the Waste Board acting as a responsible agency
23 under CEQA, following San Diego County's local process and
24 the LEA's action as lead agency certifying the EIR. And I
25 think this is going to respond to some of the points that

1 have been raised both in the letters as well as in the
2 discussion that you have.

3 First, just I'm going to second what the two
4 prior speakers have said. This is an incredibly thorough
5 environmental impact report. It's been encirculated for
6 public review three times now. It includes detailed
7 technical appendices on every conceivable topic.

8 From my own experience, this EIR takes up more
9 shelf space in my office than any EIR I've ever seen.

10 You don't judge an EIR just on the length of the
11 paper. But there are a lot of very thorough studies in
12 all of the appendices and the supplements. It's a
13 tremendously thorough document, very thoroughly pier
14 reviewed by county experts.

15 Second -- and this is the first legal point I
16 want to make -- the EIR now before this Board is presumed
17 adequate as a matter of law. As you know, the attorneys
18 that have written the letters before you, the lengthy
19 letters that repeat a lot of their comments, have also
20 filed a lawsuit in San Diego Superior Court challenging
21 the environmental impact report.

22 The CEQA statute has some specific language that
23 tells us what to do in that circumstance. And that's
24 Public Resources Code 21167.3. That's statute says that
25 we, Waste Board -- or that you, Waste Board -- excuse

1 me -- acting as a responsible agency shall assume that the
2 environmental impact report complies with CEQA and proceed
3 to the permit decision.

4 So adequacy of the environmental impact report is
5 really before the San Diego Superior Court, it's not
6 before the Waste Board. It is the foundational document
7 for your review. But the statute speaks very clearly,
8 that EIR comes to this Board with a legal presumption that
9 it is adequate and it complies with CEQA.

10 The second point I want to make is that the lead
11 agency, responsible agency issue, and this commission's
12 jurisdiction affects the scope of the CEQA decision that's
13 before the Board and before this Committee, compared to
14 the decision that the LEA made when as lead agency it
15 certified the EIR.

16 And this is -- I'm going to cite Public Resources
17 Code 21004. It's a statute that governs the Waste Board
18 whenever a permit comes up. And it says, "In mitigating
19 or avoiding a significant effect of a project on the
20 environment" -- so when you're making your decision about
21 mitigation, about alternatives that mitigate, about
22 whether to deny a project because of significant
23 impacts -- "in mitigating or avoiding a significant effect
24 of a project on the environment, a public agency may
25 exercise only those express or implied powers provided by

1 law other than this division" -- "this division,"
2 referring to CEQA.

3 So when you act on the CEQA issues, your action
4 has to be based on your jurisdiction under the Waste
5 Board's statute, in other words the state minimum
6 standards under 44009. There's not a disconnect between
7 CEQA and your Waste Board jurisdiction.

8 The statute does go on to say that you use that
9 power given under the integrated waste laws to mitigate
10 impacts. But it's that power. CEQA doesn't expand your
11 power to do things outside of what's normally done when
12 you look at permits that come from local enforcement
13 agencies.

14 So the jurisdiction here is a concurrence
15 decision based on compliance with state standards under
16 the Public Resources Code.

17 I guess I'll just sum up and would be available
18 for questions. I mean the Waste Board's action, it is
19 limited in that sense, but it is still a very important
20 part of the CEQA process. There's a very thorough
21 environmental impact report prepared by San Diego
22 County -- prepared and reviewed by San Diego County and
23 the local LEA process. You should have full confidence
24 that the LEA has presented a very thorough record,
25 evaluating the project impacts, the mitigation for those

1 impacts, and the benefits and the local need for the
2 project.

3 And appreciate your time.

4 COMMITTEE MEMBER MARIN: I have a question, Madam
5 Chair.

6 CHAIRPERSON MULÉ: Thank you.

7 Ms. Marin.

8 COMMITTEE MEMBER MARIN: Mike, do you concur with
9 the statements that the attorney just made?

10 STAFF COUNSEL BLEDSOE: Through the chair, Ms.
11 Marin. Yes, I essentially agree with everything he said.
12 I don't want to be held to his precise language because he
13 is an advocate for the, you know, LEA and operator as
14 opposed to in advocate for you, and he's not really fully
15 explaining all of the, you know, legal niceties. But
16 fundamentally, yes, what he said was correct.

17 COMMITTEE MEMBER MARIN: Thank you.

18 CHAIRPERSON MULÉ: Mr. Paparian.

19 COMMITTEE MEMBER PAPARIAN: Yeah. If I was to
20 say nothing in solid waste law limits the authority of the
21 Waste Board to object to a permit on any grounds,
22 including land use grounds, so long as it states its
23 objections, I assume you'd agree with that?

24 MR. ZISCHKE: I guess I'm going to answer that
25 by -- I'm not sure that I do, but I'm not sure that I

1 don't. And I'm really up here to just address the CEQA
2 point that the decision needs to be based on the waste
3 laws. I --

4 COMMITTEE MEMBER PAPARIAN: Right. And I'm
5 getting at what I think you think the waste laws say. And
6 what I'm quoting from is one of your filings in the San
7 Diego case where you and Mr. Peltser say, "Nothing in
8 solid waste law limits the authority of the Waste Board to
9 object to a permit on any grounds, including land use
10 grounds."

11 MR. ZISCHKE: Well, I'm certainly going to stand
12 by our filings. But I mean the point I wanted to make
13 here was simply that the CEQA process has to be based on
14 powers of the Board pursuant the integrated waste
15 statutes. And I really -- I think those speak for
16 themselves, and I'll defer to your staff on what those are
17 and -- I mean that --

18 COMMITTEE MEMBER PAPARIAN: It appears that
19 you've interpreted our statutes pretty broadly in terms of
20 what our authority might or might not be.

21 MR. ZISCHKE: I don't have the papers in front of
22 me, so I really don't have a response on that.

23 COMMITTEE MEMBER PAPARIAN: Okay. I had a couple
24 other questions. They may be for the gentleman before
25 you. I'm not sure.

1 Medicine Rock has come up quite a bit. And what
2 I want to just clarify is -- because I've seen a couple
3 different numbers -- how far is Medicine Rock from any
4 area that's going to be disturbed or otherwise impacted in
5 any way by the project?

6 MR. HUTTON: Medicine Rock is not on the
7 property, is not on Gregory Canyon's property, first of
8 all.

9 Second is it's hard for me to ballpark a guess,
10 but I'm thinking about a thousand to fifteen hundred feet.

11 The other thing to consider is that the EIR
12 addressed the impacts on both Medicine Rock and Gregory
13 Mountain, which is on our property, but which will be put
14 into permanent conservation and found that there are no
15 objective impacts on those properties.

16 COMMITTEE MEMBER PAPARIAN: Okay. So you're
17 thinking it's somewhere between a thousand and fifteen
18 hundred feet. So anything within that -- let's just say
19 it was a thousand and one feet. So nothing closer than
20 that thousand and one feet, if that was the number, would
21 be impacted in any way by the project?

22 MR. HUTTON: That would be speculative. All I
23 can say is that the EIR determined there are no objective
24 impacts from this project on Medicine Rock.

25 And I also would want to -- also amplify that by

1 saying that as we've continued to work on our other
2 permits, including our air permit, that's been reconfirmed
3 that all ambient air quality standards will be met at the
4 property boundary and therefore will not impact Medicine
5 Rock.

6 COMMITTEE MEMBER PAPARIAN: Okay. You're
7 answering a slightly different question than I'm asking.
8 What I'm trying to get at is just in terms of any
9 disturbed area, how far -- you know, anything that's
10 disturbed in any way by the project, you know, any traffic
11 movement, bulldozers. You know, will anything -- how far
12 or how close will that happen to Medicine Rock?

13 MR. HUTTON: Okay. We're looking at the thousand
14 to fifteen hundred feet. Because the way it works, sir,
15 is that most of the ancillary facilities are located to
16 the west of the project, so traffic will be coming in from
17 the west. Medicine Rock is located to the east. And so
18 that there's a pretty defined boundary for evaluating
19 impacts. It will be the limit of the landfill itself --
20 the eastern boundary of the fill itself, because, again,
21 no ancillary operations, no traffic would occur any closer
22 to that.

23 COMMITTEE MEMBER PAPARIAN: Okay. Thank you.

24 CHAIRPERSON MULÉ: Thank you.

25 Thank you, Mr. Zischke.

1 And did you have anything to say?

2 MR. BOUCHER: No, I didn't.

3 CHAIRPERSON MULÉ: Okay. Does that conclude the
4 presentation for the LEA and the project proponents?

5 Okay. Thank you very much.

6 Now, I would like to hear from -- let's see, I
7 believe it's project opponents, Pala Band of Mission
8 Indians and River Watch.

9 (Thereupon an overhead presentation was
10 Presented as follows.)

11 MS. VOLTURNO: Good afternoon, Chair and members
12 of the Board. My name is Lenore Volturno, and I'm the
13 Director of Environmental Services for the Pala Band of
14 Mission Indians. And I'm here today with our
15 environmental counsel, Walter Rusinek, to talk to you
16 about why we respectfully request that you reject the
17 permit for the proposed Gregory Canyon Landfill.

18 MS. VOLTURNO: And we also have a PowerPoint
19 presentation for you today.

20 --o0o--

21 MS. VOLTURNO: This is the project site itself.
22 You can see that the boxed area is the project site. And
23 adjacent to that on the east is the Pala Indian
24 Reservation. And the land for Gregory Canyon does
25 actually touch the indian reservation at the top of the

1 mountain.

2 --o0o--

3 MS. VOLTURNO: This is an overall aerial shot of
4 the site itself. You can see that it's a very pristine
5 area. And one of the things to note is that the San Luis
6 Rey River runs right through the project itself. While
7 the landfill itself doesn't go into the river, it does run
8 adjacent to the river. And that entire large mountain in
9 the center is Gregory Mountain. And the entire mountain
10 is considered a sacred site.

11 Gregory Canyon is adjacent to Medicine Rock. And
12 it is actually 800 feet. I know -- it's 800 feet from the
13 closed disposal site. I don't know how far it is from the
14 ancillary facilities, but it is 800 feet from the closest
15 disposal site.

16 We have submitted numerous comments on the air
17 quality degradations and the effect that that would have
18 on Medicine Rock. And those have not been addressed.

19 I'm also going to say that we wholeheartedly
20 agree with the comments that Denise Ducheny made earlier.
21 And I won't repeat all of her comments in the interests of
22 time.

23 But you can see that this is a pretty pristine
24 area.

25 And it's important to note too that the tribe has

1 always been opposed to the landfill. And we have
2 submitted numerous comments. And kind of the response
3 that we've gotten over a period of time to these comments
4 basically is that, you know, there's unavoidable and
5 unmitigable environmental impacts including, as mentioned
6 earlier by staff, traffic and circulation, air quality,
7 ethnohistory, aesthetics and noise. And so the fact that
8 they're identifying those as unmitigable impacts, you
9 know, doesn't always -- they're mitigable impacts for this
10 project. And so that's really one of the concerns and has
11 been the concern of the reservation from the very
12 beginning of this battle against the landfill.

13 We agree with staff that -- you know, we don't
14 think that the Integrated Waste Management Board is ready
15 to approve a permit at this time.

16 I'm going to talk a little bit about the history,
17 and then I'm going to refer to counsel for the specific
18 Public Resources Codes.

19 --o0o--

20 MS. VOLTURNO: Gregory Canyon, as we just saw, is
21 a steep undeveloped canyon. It's dominated by riparian,
22 chaparral and coastal sage scrub habitat. It's habitat
23 for four endangered -- federally endangered species. And
24 there are currently nesting Golden Eagles on the site.

25 The western slope of the mountain is called

1 Chokla, which is sacred to the Luiseo Indians, which is
2 not only Pala, but also includes Pachanga, Rincon, Pauma,
3 and La Jolla. And we've been together in this fight
4 against the landfill for quite some time.

5 --o0o--

6 MS. VOLTURNO: This is a close up of the canyon
7 itself. You can see that that's the eastern side of the
8 mountain. And that's a tributary to the San Luis Rey
9 River that would be wiped out by putting in a landfill
10 there.

11 --o0o--

12 MS. VOLTURNO: And here's a picture of Medicine
13 Rock. You can see that it's at the base of Gregory
14 Mountain. And right on the other side -- the canyon that
15 we looked at is directly on the right-hand side of your
16 screen, would be right across the way. And so the air
17 quality degradation in the area would actually affect
18 Medicine Rock. And as was mentioned earlier, if SB 18 had
19 been in place when this project was processed, you know,
20 they wouldn't have gotten -- it wouldn't have been passed
21 the permitting process.

22 --o0o--

23 MS. VOLTURNO: The proposed landfill is a
24 disposal of 30 million tons of waste over a period of 30
25 years. Consists of a bridge crossing the San Luis Rey

1 River. There's 87 acres of borrow pits for cover
2 material. There's no essential public services that are
3 normally associated with landfills through franchise
4 agreements because this was done by ballot box zoning.
5 And there's actually no requirement to recycle any volume
6 of waste, which those directly against one of the Board's
7 objectives in having increase in recycling in the state.
8 The area for recycling is actually less than .01 percent
9 of the disposal area.

10 --o0o--

11 MS. VOLTURNO: Here's a picture of the landfill
12 footprint itself. You can see that the San Diego County
13 Aqueduct runs through the property. That's another area
14 that it would have failed had it had to go through the
15 normal permitting process.

16 And there's been quite a few changes from the
17 original proposition for land use as opposed to what the
18 project is described as now.

19 --o0o--

20 MS. VOLTURNO: This is a projected view of what
21 it would look like with final cover once all the trash was
22 in the landfill. This was actually taken from the EIR
23 documents.

24 --o0o--

25 MS. VOLTURNO: And as far as the history. The

1 county was commissioned back in the late eighties to find
2 potential north county landfill sites. And there was 111
3 preferable sites that were found to Gregory Canyon.

4 The North County Landfill Supplementary siting
5 study in 1992 rated Gregory Canyon number 18 out of 18
6 sites.

7 And mysteriously it appeared as number 1. And
8 there was found by the district attorney's office at that
9 time that there had been some undue influence on local
10 officials, and that's how Gregory Canyon became the number
11 1 site.

12 --o0o--

13 MS. VOLTURNO: And then in 1994 after the permit
14 had been rejected by the county, the proponents of the
15 landfill decided to fund Proposition C, which was
16 conveniently called the North County Recycling and Solid
17 Waste Disposal Initiative. Although there was really no
18 meaningful recycling. And they spent about \$900,000 to
19 pass that proposition.

20 And at that time it was really an environmental
21 justice issue, although environmental justice was not a
22 term at that time. We have given a presentation
23 previously to the Integrated Waste Management Board about
24 the environmental justice issues in this case. Now I'd
25 refer you back to that presentation.

1 Proposition C provided the land use approval for
2 the project that met specific conditions of the
3 proposition. The problem is that the current project
4 description does not meet those specific conditions. And
5 so I'm going to turn it over now to Walter Rusinek to
6 discuss that specifically.

7 MR. RUSINEK: Thank you, Madam Chairman, members
8 of the Board.

9 --o0o--

10 MR. RUSINEK: A lot has been talked about
11 Proposition C and about the passage of -- or the defeat of
12 Proposition B. The point being with Proposition C is
13 that -- all we're saying is that if that proposition is
14 going to be there, that it needs to be complied with.
15 Proposition C provides land use approval for the project,
16 and sets specific conditions that need to be met for that
17 land use to be undertaken.

18 What we're saying is that this Board has the
19 authority to look at land use authorities and make sure
20 that a permitted project meets the conditions of that
21 authority, both under Section 21685 and just because they
22 need to make sure that the conditions are being met.

23 There are also provisions in Proposition C put
24 there by the proponents that require certain approvals to
25 be made by the Board itself on plans submitted.

1 Our concerns with Proposition C compliance is
2 that, first of all, the site is larger than Proposition C
3 allowed. It's 87 acres larger than the site defined in
4 Proposition C. So our question has always been: Where
5 are those other 87 acres and where are the land use
6 approvals for this project to be on the additional 87
7 acres?

8 That is a question that the Board can look at and
9 can refuse to approve the project if those land use
10 approvals are not provided.

11 --o0o--

12 MR. RUSINEK: Secondly, proposition B -- or
13 Proposition C included a single 22-acre borrow pit. We
14 now have an additional 65 acre, 150-foot deep borrow pit.
15 It was not approved by voters, does not have any
16 additional land use approvals from any county agency. And
17 this Board needs to look at that and make sure that
18 that -- and reject the project because that additional
19 borrow area has been placed on there.

20 Secondly, if that borrow area is not allowed, I
21 don't think that this site can show that they have
22 available on-site cover.

23 --o0o--

24 MR. RUSINEK: The other thing, part of
25 Proposition C that has been violated is that Proposition C

1 requires that if there is additional mitigation that needs
2 to be required through some environmental impact report,
3 as is the case here, that there has to be additional
4 acreage added to the 1313 acres of minimum open space that
5 Proposition C required. That was part of the --
6 proposition C said that, "This site is a certain acreage.
7 It's 1683 acres. And of that, at least 1313 acres will be
8 reserved as open space." Any additional mitigation
9 required through the EIR process would require additional
10 acres.

11 This site currently uses a number of acres in
12 that 1313 acres as mitigation areas for those impacts.
13 That's a violation of Proposition C.

14 --o0o--

15 MR. RUSINEK: Much has been talking about the --
16 spoken about the benefits of the project not outweighing
17 the unmitigable significant impacts. Here are the
18 impacts. And we've talked about them before, so I will go
19 through those quickly: Air quality, aesthetics -- and
20 let's just go through those -- traffic circulation, noise
21 and vibration.

22 --o0o--

23 MR. RUSINEK: And we've talked about the
24 destruction of Gregory Mountain and of Medicine Rock due
25 to the project.

1 --o0o--

2 MR. RUSINEK: The benefits of the project as
3 identified in these -- in the statement of overriding
4 consideration and then the supplemental statement of
5 overriding consideration indicate that there needs to be
6 additional capacity. It's enlightening to see that at
7 this point we're looking at building a landfill in an
8 undeveloped canyon when, as we talked about earlier today,
9 there are developments happening in the waste industry of
10 new types that will allow us to maybe not bury our waste
11 but to reuse that or to recycle it.

12 And we don't believe that additional capacity is
13 needed. There's increased recycling. The siting element
14 indicates that there is -- for every 10 percent of
15 additional recycling, we'll have four years of additional
16 capacity. And at 75 percent recycling, there will be no
17 need for any additional capacity in California -- in San
18 Diego.

19 Existing facilities are going to be expanded.
20 And the siting element discusses Sycamore. And we talked
21 about that before. In addition, it talks about the
22 expansion of Miramar for three to ten more years. And I
23 know that the City of San Diego is in discussions with the
24 U.S. Government to expand that facility as well.

25 There are biomass conversion projects that have

1 been proposed for the area. And there is -- the City of
2 San Diego is looking at a construction debris recycling
3 project to also lessen the amount of waste.

4 So the question is: If we don't need this
5 landfill, are we going to get something that's going to be
6 a white elephant?

7 The other benefits that were suddenly added to
8 the statement of -- supplemental statement of overriding
9 considerations were these minor and unconfirmed economic
10 benefits, which simply do not outweigh the impacts of the
11 project. And I think that the staff report correctly
12 states that there's no support for those economic
13 benefits.

14 --o0o--

15 MR. RUSINEK: We talked about this provision of
16 CEQA. And I know that there will be other comments on
17 CEQA as well.

18 We talked about the no-project alternative. I'd
19 like to say that one thing that the EIR talks about when
20 they talk about the no-project alternative is they come to
21 the conclusion two reasons that no-project alternative
22 will not work: Is that we need capacity, which we just
23 talked about I don't think is necessary; and, secondly,
24 they talked about the fact that the vehicle miles traveled
25 would mean that not placing this landfill would actually

1 be more beneficially -- more environmentally damaging than
2 not having it. But as you noticed, the statement of
3 overriding considerations does not include that analysis
4 because the vehicle miles traveled analysis is simply
5 faulty. There's no assurance of where this waste is going
6 to be coming from and there's no analysis of waste coming
7 from Los Angeles in the EIR.

8 --o0o--

9 MR. RUSINEK: The siting criteria are in the
10 siting element. And Section 14-18756 of C.C.R. states
11 that a site shall not be identified if it violates those
12 siting criteria. There are at least three of those siting
13 criteria that are in the current siting element that this
14 site violates. And those are listed there: That it would
15 result in the taking of endangered species; it's within
16 1,000 feet of a site eligible for the National Historical
17 Register; and it's also located within 200 feet of the
18 county water authority aqueducts. So this site does not
19 meet and is not in conformance with the siting element at
20 the present time.

21 --o0o--

22 MR. RUSINEK: There's also been statements made
23 that the permit as written is sufficient, meets the
24 minimum standards. But there's a number of problems that
25 have been outlined in the 60-page letter that's been

1 referred to. I'm not going to go over all of them.

2 But even to small points, that there are permit
3 conditions in there that differ from the mitigation and
4 monitoring reporting program. There are not adequate
5 conditions in there to assure the protection of the 1313
6 acres. We don't believe the dust control measures are
7 sufficient. And there's actually a limit on the liability
8 for the operator for contaminating groundwater, which has
9 no business being in a permit that this Board would
10 approve.

11 We also believe that the -- at this point that
12 the design provided for the landfill are inadequate. They
13 are still at a conceptual level. I have looked at the
14 drawings for this site. And I swear I'd have to turn in
15 more detailed drawings to get an improvement to my house
16 built in the County of San Diego than have been turned in
17 by the proponents of this project to get a permit to build
18 this enormous landfill.

19 We believe that the drainage control measures are
20 inadequate. There is a perimeter drainage channel that is
21 going to be installed that is supposed to stop run-on onto
22 the landfill. The JTD admits that that will not even be
23 completed until after the Phase 1 portion of the landfill
24 is completed, wherein there will be a million tons of
25 waste already disposed. There's no discussion in the JTD

1 or any other part of the permit that tells -- that
2 indicates how that run-on will be controlled.

3 --o0o--

4 MR. RUSINEK: And that goes to this point, that
5 conceptual designs at this time are inadequate. Even the
6 EIR states that there would be more detailed designs
7 provided.

8 One other thing that is not provided, that I have
9 listed here and have not mentioned, is that there is no
10 water source identified. The application form for this
11 permit indicates that individual wells will be used. Even
12 though we have requested numerous times that those
13 individual wells be identified, there has been no response
14 to that. There has been statements about the fact that
15 there is adequate water on site. We do not believe that
16 there's any legal right for the proponent to use those
17 waters for dust control purposes and other purposes on the
18 landfill proper.

19 --o0o--

20 MR. RUSINEK: We talked about current
21 documentation. We won't go into that anymore. But the
22 trust agreement I've seen is not current. It's three
23 years old. There may be other documents submitted that I
24 have not seen.

25 --o0o--

1 MR. RUSINEK: The conclusion is that this is not
2 an appropriate location for the landfill. We would
3 request that this subcommittee recommend to the Board that
4 it not be approved and that it be objected to.

5 Thank you for your time.

6 CHAIRPERSON MULÉ: Thank you both.

7 We have a question, Mr. Rusinek.

8 COMMITTEE MEMBER PAPARIAN: Yeah. You know, I
9 asked the proponents about the thousand feet. They
10 assured me that it was more than a thousand feet from
11 Medicine Rock. And you're suggesting that it's 800 feet
12 from Medicine Rock.

13 MR. RUSINEK: I think the EIR states that it's
14 800 feet.

15 COMMITTEE MEMBER PAPARIAN: Okay. Now why in
16 your view is that important? What's --

17 MR. RUSINEK: The siting criteria in the 1996
18 siting element indicate that you can not have -- you will
19 not -- they will not site a location for a landfill if it
20 is within 1,000 feet of a site eligible for the National
21 Register.

22 COMMITTEE MEMBER PAPARIAN: Okay. So if this is
23 a site eligible for the National Register and it's within
24 a thousand feet, you're saying it conflicts with the
25 siting element?

1 MR. RUSINEK: 1996 siting element, yes.

2 COMMITTEE MEMBER PAPARIAN: Okay. Thank you.

3 CHAIRPERSON MULE: Ms. Marin.

4 COMMITTEE MEMBER MARIN: Yes, I'd like to have --

5 I have a question regarding, the fact that it's eligible

6 for federal registry, does that mean that it's not

7 registered yet?

8 MR. RUSINEK: Yes, that's all the siting element

9 says, "Is it eligible for the" --

10 COMMITTEE MEMBER MARIN: But is it registered?

11 MR. RUSINEK: It has not been registered, no.

12 COMMITTEE MEMBER MARIN: It has not been

13 registered?

14 MR. RUSINEK: It is not -- it has not been

15 confirmed as being registered, yes.

16 COMMITTEE MEMBER MARIN: Okay.

17 CHAIRPERSON MULE: Is it in the process of being

18 registered?

19 MR. RUSINEK: Yes, it's in the process, yes.

20 COMMITTEE MEMBER MARIN: The bill that Senator

21 Ducheny alluded to, Senate Bill 18, is either Gregory

22 Mountain or Medicine Rock stipulated in that bill, do you

23 know?

24 MR. RUSINEK: I don't know, but I can get that

25 information for you.

1 COMMITTEE MEMBER MARIN: Thank you.

2 CHAIRPERSON MULÉ: Okay. Thank you.

3 I think the next phase of this is we are going to
4 take public comment. And I do have about a dozen or so
5 speaker slips.

6 I just want to mention also that we did receive
7 numerous letters, about 70 letters, I know from our
8 collective offices on this topic. And so, again, we read
9 all of these and we appreciate all the input that we have
10 received to date. I am going to ask each speaker to limit
11 themselves to three minutes if possible, because we do
12 have so many speakers.

13 So with that I will start with Mr. Jack Miller.
14 I know that you did make a presentation, so you're okay to
15 waive your time.

16 MR. MILLER: I'm okay.

17 CHAIRPERSON MULÉ: Lenore.

18 MS. VOLTURNO: I spoke.

19 CHAIRPERSON MULÉ: Yeah, okay.

20 The next person is Joy Williams

21 MS. WILLIAMS: Good afternoon.

22 CHAIRPERSON MULÉ: Good afternoon.

23 MS. WILLIAMS: Can you hear me?

24 Okay. I am Joy Williams from the Environmental
25 Health Coalition in San Diego.

1 Environmental Health Coalition is a 24-year-old
2 nonprofit environmental justice organization that works in
3 the San Diego/Tijuana region. And we do urge you to
4 oppose the solid waste permit for this facility and to
5 reject the statement of overriding consideration.

6 Lenore has already alluded to the environmental
7 justice concerns with this project. And I wanted to say a
8 little bit more about that.

9 Cal EPA and its member agencies, including the
10 Integrated Waste Management Board, have adopted an
11 environmental justice interagency strategy and an
12 environmental justice action plan which commit the
13 agencies to pursuit of environmental justice in all their
14 actions.

15 The proposed landfill at Gregory Canyon raises
16 many environmental justice concerns:

17 The landfill would be located immediately
18 adjacent to the Pala Reservation, which is home to 600
19 people.

20 It's also in a rural census tract which is 61
21 percent non-white, according to the 2000 census.

22 The final EIR finds that the dump will have
23 environmental impacts that are significant and
24 unremediable, as you have heard, in the areas of air
25 quality, noise, traffic, vibration, and aesthetics.

1 All of this by itself is sufficient to establish
2 that the proposed landfill is a classic environmental
3 justice issue.

4 But in addition, as you've heard, Gregory
5 Mountain itself is sacred to the Pala people. The special
6 irony of dumping our society's wastes on the doorsteps of
7 native Americans is obvious and painful. To do so in a
8 way that degrades a sacred place and threatens to pollute
9 their water, and not just in our lifetimes but
10 indefinitely into the future, creates an environmental
11 justice nightmare that would put us all to shame if we
12 allow it to occur.

13 The Cal EPA environmental justice strategy and
14 our fundamental humanity compel us to choose other options
15 for handling our solid waste. And there are other
16 options, as you've heard.

17 In addition, the Pala people, who have always
18 expressed strong opposition to the landfill. A basic
19 tenet of environmental justice is that people have a right
20 to determine the character of their own community. In
21 America this right has not been enjoyed by non-white
22 communities, which historically have been targeted for
23 less desirable land uses. Few of us would welcome a
24 landfill in our neighborhood. But the fact is that dumps
25 of all kinds are sited disproportionately in non-white

1 communities. To fulfill the letter and spirit of the Cal
2 EPA environmental justice strategy, particular sensitivity
3 is needed to impacts on rural lands and tribes and to
4 supporting the community's own vision for its development.

5 I see I'm getting low on time. I want to make
6 two more points quickly. One is that the environmental
7 justice strategy gives prominence to precaution as a key
8 component of environmental justice. Common sense and
9 precaution dictate that a dump should not be placed near
10 an aquifer and a major river.

11 And, finally, I would like to note that
12 environmental justice requires informed public
13 participation. In our pre-election phone calling to get
14 out the vote, Environmental Health Coalition's staff and
15 volunteers called over 3,000 people and talked to over a
16 thousand. All of us who made phone calls reported talking
17 to people who opposed the Gregory Canyon Landfill and
18 mistakenly planned to vote "no" on Proposition B.

19 So we do believe this confusion was widespread,
20 and we urge you not to interpret the election results as
21 an accurate reflection of the public's sentiment regarding
22 the proposed dump.

23 So, in conclusion, we believe that environmental
24 justice and a precautionary approach do require denial of
25 this permit and rejection of the statement of overriding

1 considerations.

2 Thank you for your consideration of our comments.

3 CHAIRPERSON MULÉ: Thank you, Joy.

4 Our next speaker is Joyce Ward.

5 MS. WARD: Good afternoon. My name is Joyce Ward
6 and I'm with River Watch.

7 And I would like to make the following comments,
8 particularly to Mr. Paparian, that when you questioned the
9 Sycamore expansion -- the Sycamore Landfill was initially
10 permitted as a three-phase project. It is currently in
11 Phase 1. The EIR is in preparation for Phase 2. And
12 there is still Phase 3 to go. So the need for Gregory
13 Canyon, if you actually took not only Phase 1, but 2 and
14 3, is not necessarily a need for it at all.

15 I would like to take the rest of my remarks to
16 comment on the benefits analysis and the statement of
17 overriding considerations.

18 Number 1, the LEA staff comments is where I took
19 these comments. Number 1, that Gregory Canyon is not
20 needed for the county to meet its 15-year disposal
21 capacities. There are other strategies, and if you take
22 in Sycamore on the 3 phase.

23 There is no evidence that north county
24 jurisdictions would use Gregory Canyon because of concerns
25 the project will adversely affect water resources.

1 The City of Oceanside prohibits their hauler from
2 ever using Gregory Canyon. That contract I believe has
3 eight years to run.

4 They also stated that there is no evidence to
5 support the applicant's claim that the project will reduce
6 the overall vehicle miles traveled in the county for waste
7 disposal. And in fact three cities would likely
8 experience increased VMT's in case they were to use it.

9 The traffic congestion and safety on Highway 76
10 at the intersection of Interstate 15 will be significantly
11 and adversely affected by this project. In fact, Channel
12 10 had a program only Friday discussing Highway 76 on this
13 stretch. It is now called Death Alley. In the last five
14 years, they said that the traffic has tripled.

15 Well, the EIR is based on traffic figures from
16 1999. So the tremendous increase that is there now is not
17 what we're even looking at. I live off of that highway.
18 And I can tell you it is incredible now.

19 This project does not support preservation of
20 biological resources or the county's MSC plan in any
21 section or extraordinary way because it preserves only
22 land required by Prop C, much of which could not be
23 developed in any case because it consists of steep slopes,
24 rock outcroppings, and in any event preserves the land in
25 separate noncontiguous areas separated from each other by

1 Highway 76, the landfill, and enhances biological
2 resources only where required as mitigation for
3 significant adverse impacts.

4 The staff report further went on to say that
5 there is no evidentiary support for the economic benefit
6 claims made by the applicant. That there is no county
7 goal or policy to provide landfill capacity in north
8 county or to decrease reliance on out-of-county disposal
9 sites. In fact, this site is closer to the Riverside
10 County line than it is to the rest of San Diego County.

11 The benefits analysis relies in large part on
12 outdated and obsolete data and information. It goes on to
13 say that the project applicant has either misstated or
14 taken out of context several of this Board's policies it
15 claims the project supports. Indeed, a number of IWMB
16 policies stress the importance of protecting the region's
17 water resources from contamination caused by solid waste
18 facilities.

19 Unfortunately, the final EIR as well as the
20 benefits analysis and the staff report failed to
21 acknowledge the substantial risk that this landfill will
22 pose to very scarce water resources.

23 If you take out the misinformation and the
24 outdated data, the exaggerated and unsupported speculation
25 cited as evidence in the benefits analysis, it is clear

1 that there is no real need for this project. There are no
2 benefits of any substance which in any reasonable person's
3 judgment could possibly outweigh the severe and
4 unmitigated impacts of this project.

5 CEQA requirements state that a statement of
6 overriding considerations be supported by substantial
7 evidence in the record. The applicant's benefit analysis
8 simply does not provide the required substantial evidence
9 to support a statement of overriding considerations.

10 I noted in your staff comments that this Board
11 had never dealt with a project that significantly impacted
12 ethnohistory and native American interests. I would like
13 to point out to you that that entire mountain is
14 considered sacred by not only the Palas, but by all of the
15 Luiseo people. The Luiseo tribes range from the Palm
16 Springs area almost down to the Mexican border.

17 I would urge you to read the comments submitted
18 over the years by Florence Shipek, who -- Dr. Shipek was
19 the noted authority on the Luiseo people, who's passed
20 away I believe only last year.

21 This mountain is a place of meditation, fasting,
22 and healing. It is still in use today. One of my friends
23 allows tribal members to cross her property, because she
24 is at the back of the mountain, for ceremonies.

25 There were also testimony given by a woman by the

1 name of Mona Sesby, who is an elder at the palace. And
2 she detailed how her husband was healed by ceremonies on
3 the reservation and then continuing on to the mountain
4 after he was diagnosed with kidney cancer. She believes
5 this, and this mountain is in use today.

6 When I brought up these facts about the sacred
7 mountain at a meeting of the Regional Solid Waste
8 Association on March 11th -- that's six cities that banded
9 together when the county sold the landfills to negotiate
10 for their trash hauling -- Mr. Chase was there to ask for
11 their support and comment on the EIR.

12 They then asked him if what I had said about this
13 mountain and Medicine Rock was correct. And I was shocked
14 when he said -- you want to talk about environmental
15 justice. He said, "It might be the Sistine Chapel. But
16 they don't own it. We do." That is unacceptable and it
17 is not a place for a dump.

18 Thank you.

19 CHAIRPERSON MULÉ: Thank you.

20 Next speaker is Everett Delano.

21 I'd like to ask everyone to please try to limit
22 your comments to three minutes, because we have several
23 speakers.

24 Thank you.

25 MR. DELANO: Yes, thank you. Timing's perfect,

1 isn't it?

2 Thank you.

3 I'll make this quick. Just on behalf of River
4 Watch, a few things to add. You have my letter, so I
5 won't repeat what I said in there. I will say for the
6 benefit of those who haven't had a chance to read it, that
7 what my letter focused on were some issues having to do
8 with the relationship between CEQA -- your obligations,
9 authority with regard to the relations between CEQA and
10 the solid waste permitting laws. And I think I tried in a
11 few pages to summarize those for you, I hope in a way that
12 was cogent. If you have any questions about those or
13 other issues, I would welcome it either now or at any time
14 in the future.

15 I do want to identify a couple things about your
16 authority I think that is kind of slipping through
17 everything here today. One of the things I want to jump
18 off of is some discussion earlier between the Board and
19 people who have been speaking here about why you're here
20 and you're in this position. It's interesting to me -- in
21 fact, frankly, it's more than interesting -- it's alarming
22 to me that we should have the LEA and the project
23 applicant up here represented by the same folks. There is
24 no separation here.

25 The problem with that should be obvious. You

1 had -- earlier today you had a discussion about a landfill
2 in another location outside of San Diego County, with some
3 very grave concerns about where the LEA didn't seem to be
4 acting to enforce. Here you have a situation where before
5 you is a proposed project -- a proposed permit by the LEA
6 represented by the counsel for the applicant.

7 My question -- and my hope is this Board will
8 take seriously -- the fact that you are not being
9 presented with what I would consider to be -- what I would
10 hope to be -- an unbiased presentation.

11 Certainly in my area of practice conflict of
12 interest is an important aspect. And even the perception
13 of a conflict of interest is enough to cause grave
14 concern, so raise yellow flags if not red flags. I would
15 think that that is something of grave concern here.

16 Another issue that causes me grave concern is you
17 hear a lot of discussion about elections and election
18 campaigning and what or what wasn't said. One of the
19 reasons for that is, as you well know, I'm sure, this
20 Board's authority is not limited by what voting occurred
21 or didn't occur. Whether the voters knew or didn't know
22 about what they were voting on is really I think beside
23 the point for your authority. Thank goodness landfill
24 decisions, permitting decisions are not made by a vote of
25 the people. If they were, no doubt we'd have even more

1 environmental justice issues and other injustices than are
2 already occurring. So it's nice to know that this Board
3 recognizes its authority is to look at this permit.

4 Now, in terms of what this proposed permit does
5 and doesn't do, let me just point out a couple things.

6 First of all, state minimum standards. The
7 recognized -- and I would argue that there are additional
8 unmitigated impacts that the EIR doesn't acknowledge. But
9 let's just stick with the ones that are acknowledged, the
10 five that are discussed in your staff report. Many of
11 those are things that are in your state minimum standards.
12 Dust, for example. Acknowledge significant dust impacts
13 associated with this project. That's an area that's in
14 your state minimum standards. And that alone seems to me
15 to be a basis to reject this project.

16 Traffic, noise. And additionally I think you
17 have a number of other issues in addition to the ones that
18 have been acknowledged to be significant environmental
19 impacts. Drainage and environmental justice are two that
20 come to immediate mind.

21 But I want to point out one final thing and then
22 I'll sit down. That is, the EIR itself. It's an EIR that
23 was certified almost two years ago now. The analysis in
24 that EIR is well earlier than that, it should not be
25 surprising. Now, of course the applicant and the LEA

1 comes up and says, "Well, now, that's because it took so
2 long to do this." That may be so. But there have been a
3 number of changes, both to the project since the EIR was
4 certified -- we know that because we've seen that in this
5 LEA staff report -- and to the vicinity of the project
6 site.

7 In and of itself -- you do have a role under
8 CEQA, as has been pointed out, even by the applicant and
9 the LEA's attorney, you do have a role under CEQA, in and
10 of itself, that's a basis for you to say, "You know,
11 there's not enough here. We have new information, new
12 project changes, new traffic, the additional homes that
13 are proposed for the area, casinos that have been planned
14 in the area, new issues that have arisen. We need to take
15 this back, combined with our ability to look at
16 alternatives, the new information we have on those, and
17 consider this more thoroughly in that regard."

18 So with that, I'll sit down. Thank you.

19 CHAIRPERSON MULÉ: Thank you very much.

20 The next speaker is Gus Pennell.

21 MR. PENNELL: Madam Chair and members of the
22 Committee. My name's Gus Pennell. I'm with the City of
23 Oceanside. You do have a letter that was sent by my boss,
24 which covers most of objects that I'm going to start
25 talking on.

1 The City of Oceanside has been against the siting
2 of Gregory Canyon since the very beginning. We've voted
3 for -- the city council unanimously has voted against the
4 siting of the landfill several times, passed several
5 resolutions. And even for Proposition B, they were in
6 favor of Proposition B as well and they went on record as
7 such.

8 Joyce Ward was correct. That City of Oceanside
9 will not haul trash to Gregory Canyon if it is built. And
10 that will last probably beyond the eight years that we're
11 talking about, because we are opposed to that landfill
12 because we believe it will pollute the groundwater that we
13 are currently relying on for 20 percent of our drinking
14 water. We take three million gallons a day. Within six
15 months or less -- we're just now going through a
16 permitting process -- we'll be taking six million gallons
17 a day.

18 Our city's 177,000 people. Twenty percent of our
19 water will be coming from the groundwater. If the
20 landfill pollutes that groundwater, it will make it
21 unusable.

22 The area also has been studied by the water
23 authority, Metropolitan, City of Carlsbad and the Rainbow
24 Municipal Water District as a storage and reuse area,
25 where the imported water would be stored for drought

1 periods and for future reuse.

2 So that it's not only an Oceanside water issue.

3 It's a regional water issue. If that landfill were to

4 pollute the aquifer -- and we're at the west end of the

5 aquifer and everything flows downhill. So anything that

6 happens up there will get to us. And it may not get to us

7 within a year or two, but we're there for the long haul.

8 We've been using the groundwater since the 1800's, very

9 beginning of 1800's, and we plan on using it for the next

10 several hundred or thousand years. So we are concerned

11 that that will interrupt a long-term water use. And any

12 water we take from the basin, the rest of San Diego County

13 has imported water to use, which we don't end up taking

14 for our use. So it's a regional water source. It's not

15 just the City of Oceanside water source.

16 I'm going to basically leave it at there, because

17 that is our main concern is water. All the rest of the

18 issues have been covered more than adequately. And it's

19 gone on long enough.

20 Thank you very much.

21 CHAIRPERSON MULÉ: Thank you very much.

22 Our next speaker is Cheryl Reiff.

23 MS. REIFF: Good afternoon. My name is Cheryl

24 Reiff. I'm here to represent the Sierra Club, San Diego

25 Chapter, as well as a lot of disgruntled and discouraged

1 voters.

2 The establishment of a landfill in Gregory Canyon
3 is such a bad idea and so potentially damaging and
4 expensive, that it should be a non-issue. It would not be
5 an issue except for a gross and perpetuated misuse of our
6 initiative process and the repeated deception of the
7 public.

8 The California Integrated Waste Management Board
9 has the power to prevent a probable and expensive
10 catastrophe from occurring in the San Luis Rey River
11 watershed of San Diego County.

12 It is important to point out why there was a Prop
13 C in the first place. It's because this proposed landfill
14 failed all the initial siting criteria. It failed
15 permitting processes over and over throughout the last ten
16 years in spite of Prop C, in spite of lobbying, and in
17 spite of monetary efforts.

18 The Sierra Club has opposed the landfill since
19 before Prop C, along with the Pala Indians.

20 I would like to stress that Gregory Canyon was
21 not even on the first list of sites. It was put on the
22 list by lobbying efforts.

23 The environmental issues brought forth in the
24 siting criteria alone are sufficient to deny permitting.
25 The landfill is unneeded, and it is insufficient at that.

1 The main aqueduct for San Diego's drinking water runs
2 through it. The mitigated land -- or the open space land
3 is, as was mentioned before, is rocky steep slopes. It's
4 not suitable habitat for any of the species that are going
5 to be displaced by the project.

6 I'm trying not to repeat a lot of what's in my
7 letter and just add little things.

8 One of the things that was not mentioned is that
9 there's a new super landfill being started in Imperial
10 County. That will take a lot of our trash as well as the
11 other available sites. We still capacity in Miramar. We
12 have Otai. We have plenty of capacity.

13 I have with me an E-mail message from one of our
14 planning commissioners, Carolyn Chase, who was questioning
15 one of our former executive committee members who used
16 Sierra Club's name against us on this project, and
17 questioning him why. And in this letter, it's interesting
18 to note that she states that just in Miramar and Sycamore
19 Canyon landfills we have 60 to 80 years of permitted
20 capacity.

21 I happened to bring along some of these brochures
22 that have been mentioned. And I'd like to point out that
23 this process has been deceitful all along, preying on
24 public ignorance.

25 In the first place, with Prop C, it was promoted

1 as north county should take care of its own trash. The
2 public doesn't know that trash comes from everywhere to a
3 landfill. They were -- it was insinuated and stated that
4 it would be north county taking care of north county's
5 trash. And it just simply isn't the case.

6 Also it was promoted as a recycling facility.
7 The name of it was the Gregory Canyon Landfill and
8 Recycling Collection Center Ordinance. So the emphasis on
9 recycling was strong, and now it's pretty nil.

10 Anyway, here is the real thing, of the one that
11 Mike Paparian showed. This brochure was passed out even
12 as the landfill proponents were negotiating for trash from
13 L.A.

14 Here's another one that says, "Don't let special
15 interests block this landfill." "Special interests" being
16 public health and environmental justice.

17 Here's one that blames it all on the casino. And
18 we know that this was an issue long before the casino.

19 Here's one that says it would congest our
20 freeways with trash trucks if we pass the proposition.
21 Whereas, the real problem is the congestion of 76 with
22 traffic trucks that would be going to the new landfill.

23 Another thing that I would like to state in
24 defense of the confused voters is that our initiative
25 signature gathering process was record breaking. People

1 were just anxious to sign this initiative. And we
2 collected the signatures in a very short amount of time.
3 Once they knew the real history of this process, they were
4 very, very concerned about having this new proposition and
5 not having this dump.

6 The last thing I'd like to emphasize is that it's
7 really important to protect this water source. It's one
8 of our few untainted and free-flowing rivers, with the
9 aquifer suitable for major water storage, as has been
10 mentioned. It's the sole source of groundwater for the
11 entire Pala Band of Mission Indians, for farmers,
12 ranchers, and residents in the rural areas along the San
13 Luis Rey. It provides a significant amount of drinking
14 water to communities downstream, including coastal cities
15 such as Oceanside.

16 And, again, San Diego's main aqueduct runs
17 through the borrow pit. It also runs through the trash
18 area, but they're supposed to move that. And I don't
19 think it's been clarified what they're going to do in the
20 borrow pit. So that's something that needs to be looked
21 at.

22 To jeopardize any source of water in southern
23 California, which is already dependent on supplemental
24 imported water, would be absurd, unconscionable, and
25 downright stupid, especially to endanger a river such as

1 the San Luis Rey, and especially in the face of long-term
2 drought and population increase in the areas from which we
3 import water. Our imported sources may not continue to
4 provide for our excesses.

5 The proposed landfill, we use a state of the art
6 liner. But even the EPA has stated that all liners
7 eventually fail. In fact I just heard -- well, today I
8 heard mentioned that two-thirds of the landfills are
9 leaking in California. And I've also heard that one-third
10 of San Diego County's landfills are leaking already.

11 So even though this might be monitored, how is it
12 going to be cleaned up, how will it be stopped, how will
13 it be remediated, and where would more water come from?

14 The probable consequences to public and
15 environmental health and taxpayer expense far outweigh the
16 benefits of an insufficient and risky landfill that will
17 serve only to fill the pockets of the proponents.

18 For these and our previously delineated reasons,
19 The Sierra Club, San Diego Chapter requests that you deny
20 the full solid waste facility permit.

21 Thank you.

22 CHAIRPERSON MULÉ: Thank you.

23 Our next three speakers have already spoken, but
24 I'm just going to call your names.

25 Mr. Rusinek? You're Okay.

1 Mr. Zischke? You're Okay.

2 And Mr. Hutton? You're okay.

3 Okay. It looks like this is our final speaker,
4 Mr. Tim Cass.

5 MR. CASS: Thank you, Madam Chair, honorable
6 Committee members. My name is Tim Cass with the Water
7 Resources Department of the San Diego County Water
8 Authority.

9 The Water Authority, a California special
10 district, has been an active participant in the Gregory
11 Canyon landfill issue since proposition C was considered
12 by the voters in 1994.

13 We have frequently commented on matters of
14 general interests concerning the landfill project. But I
15 am here today about an item of special interest to the
16 Water Authority, that is, the protection and relocation of
17 portions of the first San Diego aqueduct, which is
18 adjacent to the project site.

19 The Water Authority is the sole source of
20 imported water for the San Diego area, providing 90
21 percent of the total regional water supply.

22 Our imported water is transported from north
23 through two aqueducts consisting of five large-diameter
24 pipelines. The first San Diego aqueduct is the one
25 affected by the landfill project.

1 Without mitigation, the project could affect the
2 integrity of the aqueduct. And we particularly have
3 concerns about potential impacts resulting from project
4 blasting activities and construction traffic passing over
5 the pipelines.

6 Proposition C and the EIR mitigation measures
7 provide protection for the aqueduct that has been carried
8 over into the project permit. Relevant permit conditions
9 are: 1) prior to the commencement of construction there
10 must be an executed agreement between Gregory Canyon
11 Limited and the Water Authority providing for relocation
12 and protection of the aqueduct and 2) an encroachment
13 permit from the Water Authority is required for project
14 operations within the easement.

15 The Water Authority appreciates the efforts of
16 the local enforcement agency to ensure that regional water
17 supply will not be affected by the landfill project. We
18 believe the proposed permit as currently drafted provides
19 the needed protection for an aqueduct, and we request that
20 the permit, if approved, retain all the current language
21 on that subject.

22 That concludes my presentation.

23 CHAIRPERSON MULÉ: Thank you very much.

24 That concludes our public comment.

25 I'm sure we have questions from the Board. So

1 who'd like to start?

2 COMMITTEE MEMBER MARIN: I actually have a
3 question regarding the no requirement to recycle. And
4 this would be for the proponents, Madam Chair, if somebody
5 could answer that. And I don't know who would be the best
6 person.

7 But is it in fact a true statement that you
8 are -- there is absolutely no requirement to recycle? If
9 there is no requirement to recycle, are you intending on
10 doing that and is that clearly specified somewhere?

11 MR. HUTTON: Proposition C does set forth
12 recycling facilities. We intend to build them. We intend
13 to have facilities open to the public to bring recyclable
14 materials and white goods. Also we had facilities to
15 accept, store and then take away for processing waste
16 tires. Also, while we cannot process green waste, we
17 would have the opportunity, subject to further amendments
18 to the permit, to use that as ADC.

19 COMMITTEE MEMBER MARIN: Okay. Question to
20 staff.

21 Howard, is there something in the permit that,
22 should this Board decide, to clearly specify that there
23 would be some level of requirement for recycling? Is that
24 something that this Board can do? Do we have the
25 authority to mandate any particular recycling

1 requirements?

2 DEPUTY DIRECTOR LEVENSON: Ms. Marin, to the best
3 of my knowledge, we do not have that authority to specify
4 any particular level of recycling as a permit condition.

5 I could defer for further analysis of that to
6 Legal.

7 STAFF COUNSEL BLEDSOE: I think that covered it.

8 COMMITTEE MEMBER MARIN: But it is your -- see,
9 what I want to make sure is that if in fact this permit is
10 granted, that you make more than a good faith effort to
11 recycle. I mean it would seem to me that it would be in
12 your best interests to recycle.

13 MR. HUTTON: Absolutely. We'd like to do so. I
14 was particularly very interested in the bioreactor
15 discussion from earlier today, because with our five liner
16 containment system, I think we might be a very good
17 candidate for that as well, to implement energy recovery
18 as this project goes forward.

19 And, yes, we are committed to make this the best
20 environmental project we can.

21 COMMITTEE MEMBER MARIN: One more question, Madam
22 Chair.

23 The project, as the opponents suggest, is larger
24 than Proposition C required, and that there is an added
25 acreage that now has been -- is part of the permit. I

1 want to know, where does that come up? And the
2 150-foot-deep borrow pit that was not a part of
3 Proposition C, what are you doing about that?

4 MR. HUTTON: This issue is as big a red herring
5 as I've ever seen.

6 First of all, I want you to know that it was
7 raised by Procopio to the LEA. It was considered, was
8 rejected prior to this permit ever coming up to you for
9 consideration.

10 I will tell you that the boundary of the site
11 that was drawn on a map in Proposition C; the map of the
12 site in the County Assessor's office; the Alta survey,
13 which was a physical survey performed in 1998; and,
14 finally, a records survey which took all of the metes and
15 bounds of the property that was done in May of this year,
16 the site is identical.

17 One thing you have to understand is that the 1683
18 came from records from the County Assessor's office.
19 That's done for purposes of taxation only. It's not there
20 to create a precise record of ownership. If that were
21 true, then surveyors would be out of business, if these
22 were definitive records. In fact, it's funny, when we
23 pulled the records for Gregory Canyon, there are about 14
24 pages of maps that break out the site, and there's a
25 little notation, "This acreage is inaccurate." That's why

1 you have surveys. We've done it.

2 The point is that every time this site was drawn
3 on a map, now on four different occasions over 10 years,
4 it's the identical site.

5 COMMITTEE MEMBER MARIN: Thank you for that
6 clarification.

7 CHAIRPERSON MULÉ: Mr. Paparian.

8 COMMITTEE MEMBER PAPARIAN: Yeah, I had a few
9 items before you step down.

10 The site is going to bring in 30 -- I think it
11 it's 3200, or average, tons a day. What percentage will
12 be going out as recycling?

13 MR. HUTTON: That's -- we can't predict that
14 right now.

15 COMMITTEE MEMBER PAPARIAN: Any estimate in the
16 EIR --

17 MR. HUTTON: No, not that I'm aware of.

18 COMMITTEE MEMBER PAPARIAN: Traffic estimates,
19 how many people are going to be bringing in recyclables.

20 MR. HUTTON: We certainly accommodated -- we
21 considered and accommodated the traffic coming in. But
22 that -- yeah, that's hard to predict right now, as is the
23 waste, for that matter.

24 COMMITTEE MEMBER PAPARIAN: Okay. What will the
25 recycling facility look like? What would -- if it was

1 built today and I was to drive up, what would I see in
2 terms of a recycling facility?

3 MR. HUTTON: At this point we haven't done the
4 detailed design drawings. I can't tell you exactly what
5 it's going to look like. But it will have facilities to
6 accept and move out recyclable materials. Obviously for
7 white goods we'll have to have some kind of containment
8 area. And then as far as tires, also we'll have to have a
9 containment area, and also be sure that we take care of
10 issues like vector and fire hazard. But the drawings have
11 not been made at this point.

12 COMMITTEE MEMBER PAPARIAN: Any sense of the
13 estimated capacity, you know, what you'll be able to store
14 on site in terms of recyclables?

15 MR. HUTTON: No, I really don't have a good idea.
16 I'd have to look that up.

17 COMMITTEE MEMBER PAPARIAN: Okay. Thanks.

18 I wanted to -- I have a few other things, Madam
19 Chair. I wanted to allow -- we heard about the acreage
20 issue from the proponents. I wonder if we could allow the
21 opponents to tell us why they think it's an important
22 issue. I don't know who would want to do that.

23 Yeah, as you're coming up -- I mean I have in my
24 mind -- I might want to even ask our legal counsel -- I
25 guess the issue is this term "approximately" and what does

1 that mean.

2 MR. RUSINEK: Yeah, what does approximately mean.

3 Well, I don't know if it means an additional 87 acres.

4 Let me just go into a little history of this. So

5 what Mr. Hutton was referring to was the small hand

6 drawing in Proposition C. Nothing in Proposition C ever

7 refers to that drawing as being the size of the property.

8 How you can compare that necessarily to any later drawings

9 is unclear.

10 The response in the EIR was that this Alta survey

11 done in 1998 showed the site was 1770 acres. It turns out

12 the LEA had never seen that Alta survey. We were -- it

13 was almost pulling teeth to get a copy of what it looked

14 like and to get a copy of the Alta survey. That Alta

15 survey I think has been disavowed by the LEA as being

16 accurate at all.

17 So what happens is that we have an ordinance that

18 says 1683 acres has been rezoned. Now we're saying, well,

19 there's an additional 87 acres that actually was included

20 in that. From that 1683 acres there are 1313 acres that

21 are required to be maintained in open space. So we

22 suddenly have 1687 acres -- or 1683 acres, we have another

23 87 acres. And in the meantime we get 87 acres, and we get

24 a 65-acre borrow pit because that allows you now to still

25 meet that minimum standard for open space area.

1 So we need to figure out what the actual size of
2 this is. There are no legal descriptions of the
3 boundaries in Proposition C. So to say that this map
4 somehow refers to that site that is determined in later
5 surveys is, you know, somewhat misleading.

6 COMMITTEE MEMBER MARIN: Madam Chair, this is
7 going to be horrible, but I'd like the LEA then to come in
8 and settle this dispute.

9 MR. RUSINEK: You want him to do that now?

10 COMMITTEE MEMBER MARIN: Yeah.

11 MR. LORANG: Rod Lorang, County Counsel.

12 Ms. Marin through the Chair.

13 Mr. Rusinek is right that Prop C doesn't include
14 a legal description of the property, which means all there
15 is is the map. And if you're going to figure out what the
16 proposition refers to, you have to look at the map. Which
17 we've done. And, as Mr. Hutton has said, the boundaries
18 haven't changed.

19 Now, I feel a little bad about this issue because
20 the LEA contributed to the confusion in a couple of ways:

21 One is we didn't ask for a surveyed map early in
22 the process. And the Alta survey was not done for us. It
23 was done so that the proponents could go out and get
24 insurance or something. We didn't have it in our files
25 because we didn't need it. Prop C said what the

1 boundaries were. The applicants went to our zoning
2 department to say, "We've got to change the general plan,
3 we've got to change the zoning. Here's the parcels that
4 are included in that map." Zoning looked at the map,
5 looked at the parcel numbers, looked at its records. They
6 all matched up.

7 Even at that point approximate acreage versus
8 surveyed acreage wasn't in issue. So the LEA didn't get
9 involved in that. And Planning determined, "Yeah, I
10 understand what this property is." They changed the
11 general plan and did the rezoning.

12 So we didn't have the Alta survey because it
13 wasn't for our purposes, it wasn't submitted to us. And
14 when the Public Records Act request came in and asked for
15 it, we had no copy to give. We then secured it and we did
16 provide it.

17 We have not disavowed it, that that map is
18 accurate. But that big map also includes a list of
19 parcels, and the parcel listing by numbers was inaccurate.
20 The reason that we have submitted the later 2004 product
21 with the permit is because the quality control has been
22 done to be sure that all the parcel numbers are correct as
23 well as the boundaries being correct. We also want it,
24 because of this controversy, to have the applicant explain
25 to us parcel by parcel, "What's the assessor's estimate on

1 this prior to the survey and what is your survey?"

2 So your staff has a breakdown, I believe, that
3 takes the very large number of parcels that constitute
4 this thing, some of them very irregularly shaped, reports
5 the original assessor's estimate of acreage, reports the
6 final acreage as surveyed. And we're satisfied.

7 Now, part of the reason the parcel lists go wrong
8 is that you tax some things as an assessor that are not
9 separate pieces of acreage. You tax undivided interests
10 in acreage. You tax easements. They don't add acreage.
11 And along the way various people, doing various things
12 with this property, got the lists wrong. They double
13 counted some things. They left some things out. It's
14 simple mistakes that had been checked very carefully and
15 corrected. You have to start with the map in Prop C. If
16 you start there and check it carefully, there has been no
17 change, there's been no added acreage. There's just been
18 an increase in understanding and accuracy of what we've
19 been talking about all the time.

20 There was, however, one second LEA error, which
21 I'll be quite frank about. And, that is, in a draft of
22 the JTD, which we circulated, the applicants gave us an
23 inaccurate map and also an inaccurate list of parcels.
24 And one of the parcels they listed was a piece of a parcel
25 owned by Pala, which had no business being there. Pala

1 was adjacent. Somebody tried to take maps and change
2 scales and cut and paste and come up with a big exhibit.
3 And they ended up moving a line. And their explanation
4 for why the line was in the wrong place was, "Well, we
5 must have another little piece of this parcel." And we
6 let that get on the street. And we shouldn't have. And I
7 think Pala was quite justifiably concerned about seeing a
8 document that the LEA had touched that listed their land
9 as part of this landfill site. And I've apologized in
10 writing to counsel for Pala for that mistake.

11 I'll acknowledge that mistake to you here. I
12 don't blame them at all for being concerned about this
13 issue and wanting to run it around. But we've tried very,
14 very hard to do that. We've tried hard to share the
15 information with them on how that was done. But we keep
16 hearing the same concerns. And I don't know how to
17 communicate more effectively with them. But I will tell
18 you, Prop C is based on a map, the zoning and general plan
19 changes are based on the map, the surveys are based on the
20 map. It's the same property. If you compare the
21 surveyor's acreage -- pardon me -- the assessor's
22 estimated acreage to the surveyed acreage, some parcels
23 are higher, some parcels are lower. But we understand
24 this and we've got it right.

25 Thank you.

1 CHAIRPERSON MULÉ: Thank you.

2 Mr. Paparian.

3 COMMITTEE MEMBER PAPARIAN: Thank you, Madam
4 Chair.

5 Okay. Several more things I want to try to get
6 some more information on over the next week.

7 We mentioned this issue of the out-of-county
8 trash, the L.A. trash. Even if -- even if they were just
9 kidding when they said that this landfill would keep L.A.
10 trash from coming to the locality, the statement of
11 overriding considerations focuses on the economic benefits
12 to San Diego and that that would be a reason for allowing
13 a lot of unmitigatable environmental harm to come.

14 If we're going to be true to that statement of
15 overriding considerations and assuring the benefits to San
16 Diego, we may need to look at whether a mitigation measure
17 ought to be some restriction on out-of-county trash and
18 whether that would be possible. And I think looking at
19 how El Sobrante does that or perhaps some of the other
20 facilities that do place some restrictions might be
21 instructive in that regard.

22 Some of the communications we've gotten have
23 suggested that the siting element had some pass/fail
24 criteria and that this facility failed the criteria. I'd
25 like our staff just to independently look at that criteria

1 and just let us know do they agree or not agree that it
2 failed the siting element in some way or ways.

3 The question of water has come up, you know, both
4 in terms of construction and operation. I'm confused
5 about where the water's coming from. I'm not sure who can
6 answer that. But in terms of oversight on the, you know,
7 construction and operation keeping dust down, I'd like to
8 have a little clearer indication about that.

9 It's been stated that CalTrans is going to get
10 some money -- and that's part of the statement of
11 overriding considerations, is that CalTrans is going to
12 get some money to address some of the transportation
13 issues. I'd like to know if CalTrans has accepted that
14 money and what they've agreed to do with it, how much they
15 can do for the amount of money that's been put on the
16 table.

17 There's also, related to that, a discussion of a
18 sound wall. How big is it? Has CalTrans agreed to that?
19 Do others have to agree to it like the property owners in
20 the area?

21 And I think we already talked about the
22 no-project alternative and some of the recycling, whether
23 that analysis can be fleshed out in some way so that we
24 have a sense of the -- a better sense of the no-project
25 alternative.

1 COMMITTEE MEMBER MARIN: I certainly would agree
2 with some of the -- the concerns. And I really wanted to
3 emphasize the one million dollars, because I want to know
4 that if that money's going to be going into CalTrans, that
5 it applies specifically to this project and not going into
6 the general fund for CalTrans so that they can do whatever
7 they choose to do with it. It seems to me that it would
8 need to be employed to reduce some of the impacts that
9 this project would have.

10 And I don't know, Michael, whether there is
11 something that we can specifically state when we provide
12 this -- should this Board provide the permit, can we
13 specifically recommend that CalTrans utilize those monies
14 in a particular way or at least mitigate the impacts?

15 STAFF COUNSEL BLEDSOE: Ms. Marin, basically what
16 we can do in that situation is -- the Board as a
17 responsible agency may impose mitigation measures that are
18 within its powers. That's going to be the question on
19 that particular mitigation measure. My understanding is
20 that CalTrans is not committed to knowing how it's going
21 to spend the money at this point. And it might be -- I
22 don't know whether it would be physically possible for
23 them to do that.

24 We could certainly inquire or ask the LEA or
25 operator to try and track down someone at CalTrans who can

1 tell us what the status of that million dollars is.

2 COMMITTEE MEMBER MARIN: Because it would concern
3 me that the money would not be earmarked for this specific
4 project. It seems to me that it has to be very clearly
5 stated. Otherwise I'm afraid that it may go into some
6 kind of account. And, you know, L.A. may need some
7 transportation money and they go and use the million
8 dollars from this project. I don't think that that would
9 happen. But I want to make sure that it doesn't happen.

10 COMMITTEE MEMBER PAPARIAN: And then I'm also
11 interested in what it would be used for. I don't have a
12 sense of whether that buys a whole lot of mitigation or a
13 little. I don't know what CalTrans charges for things and
14 what the money would actually be used for and how much of
15 the -- you know, how many of the impacts will be dealt
16 with with that money.

17 STAFF COUNSEL BLEDSOE: If I might just add --
18 and perhaps again the operator might want to comment on
19 this -- my understanding is that it's not known at the
20 moment precisely what the million dollars would be used
21 for. It's for traffic safety and improvements that show
22 themselves to be needed over the coming period of time.

23 COMMITTEE MEMBER PAPARIAN: Again, my question is
24 partly: Does that get you all the traffic mitigation
25 improvements that have been talked about or some portion

1 of them?

2 DEPUTY DIRECTOR LEVENSON: I would add -- Mr.
3 Paparian, I want to indicate to the best of our knowledge
4 there is no agreement in place at this time between the
5 project proponent or applicant and CalTrans or any other
6 entity that might receive this money. So there's not only
7 no mechanism for transferring the money; there's no
8 specific project descriptions that have been agreed upon.

9 COMMITTEE MEMBER MARIN: Madam Chair, we can ask
10 the proponents to see where they are in negotiations with
11 CalTrans, if any.

12 MR. HUTTON: If it would please the Committee, I
13 could actually respond to all five of Mr. Paparian's
14 questions.

15 CHAIRPERSON MULE: That would --

16 COMMITTEE MEMBER PAPARIAN: I think some of them
17 were related for an independent analysis from our staff.
18 I mean I welcome your view. I think we would need to hear
19 from the opponents too.

20 MR. HUTTON: Okay. As far as the CalTrans grant,
21 first of all, this is not being done for purposes of
22 mitigation. The EIR concluded that there are no
23 project-related traffic impacts or safety impacts on SR
24 76.

25 The impact is a cumulative impact looking out in

1 combination with this project and other projects. The
2 other projects of course that are driving the cumulative
3 impact are residential development closer to Interstate 15
4 and the tribal casinos where there's this five -- drastic
5 increase in traffic over the last five years has been
6 casino driven.

7 In terms of what could it be used for, what we
8 did -- and this is in the EIR -- is that there is a
9 specific project from a public safety standpoint --
10 Gregory Canyon came up very, very early and said, "We're
11 willing to look at this. We're willing to fund it."

12 But when it turned out there were no impacts,
13 there was nothing to mitigate, it didn't find its way into
14 the mitigation plan for the project. Later and now,
15 Gregory Canyon said, "No, we made that commitment. We're
16 going to follow through on it."

17 And what was done at the time of the EIR is
18 that -- there's a hairpin turn near the intersection of 76
19 and Gregory Canyon. We talked about an interim
20 improvement to that turn as the project that we wanted to
21 look at. In fact we analyzed the impacts of doing that
22 project in the EIR. So that's one possibility.

23 But CalTrans has not specified what they want the
24 money to be used for. I would welcome input from anybody
25 to try to tie them down. It's easier said than done.

1 We've tried many, many times. I will note though that the
2 permit condition is that the money is earmarked for those
3 purposes. It could be the hairpin curve. It could be --
4 frankly, there is some desire to widen the entire highway.
5 In fact, the county would like to do that by 2020 as part
6 of its traffic management plan, a contribution to that.
7 Could be better law enforcement. Could be a variety of
8 things. So that's really where we stand right now.

9 But, yes, we've identified a specific project in
10 the EIR, analyzed its impacts, that can be funded.

11 CHAIRPERSON MULÉ: And, Mr. Hutton, my
12 understanding is that you -- that your project applicant
13 is going to make some road improvements, a turn lane or
14 whatever. Could you expand on that?

15 MR. HUTTON: That's correct. Right in the
16 vicinity of the landfill -- this comes from different
17 places. First, Proposition C indicated that we were to
18 realign SR 76 to get better sight distance in either
19 direction so that cars could see the trucks coming in and
20 out.

21 Second -- then later -- oh, actually still in
22 Prop C there would be a turn -- right-hand turn lane going
23 into the landfill, a left-hand acceleration lane when you
24 come out of the landfill to merge into traffic.

25 Then in the EIR, Gregory Canyon's agreed to fund

1 its fair share to the widening of highway to four lanes
2 between its western boundary and the landfill access road.

3 Finally -- and this is one of the recent
4 enhancements that came really out of comments from the LEA
5 and your staff -- we will be installing a traffic light at
6 the landfill access road, which, in conjunction with the
7 sight distance and the acceleration lanes, we think that's
8 a very strong enhancement to safety. In fact, it's very
9 interesting that our EIR consultant would have told us
10 that if we had done that originally, we wouldn't have had
11 to do anything else, because that alone would have brought
12 the intersection up to the county traffic standards. But,
13 you know, we're doing it all.

14 CHAIRPERSON MULÉ: Okay. Thank you.

15 Mr. Paparian, is that it?

16 I just have a question on environmental justice.
17 My question is -- and I'm going to direct it to you,
18 Howard, and then you can direct it to whomever this goes
19 to. Has there been an analysis done of the properties
20 adjacent to the landfill in terms of their value --
21 existing value?

22 DEPUTY DIRECTOR LEVENSON: If there's been such
23 an analysis, it's not been done by staff. And I'm not
24 aware of it. You'd have to ask project proponent or the
25 LEA.

1 CHAIRPERSON MULÉ: I guess I'll ask the LEA.

2 Has any analysis -- environmental justice
3 analysis been conducted for this project?

4 MS. McNEAL: Hi. I'm Kerry McNeal. I'm the
5 supervisor in the LEA program.

6 And the EIR does discuss environmental justice in
7 terms of population. And I think it does have a
8 discussion about incomes and activities, but I can't --
9 I'd have to get into the EIR and tell you.

10 CHAIRPERSON MULÉ: Yeah, my question is more -- I
11 did look at that part of it. But my question is more on
12 property --

13 MS. McNEAL: -- the specific properties right
14 next to it?

15 CHAIRPERSON MULÉ: -- the property values
16 adjacent to --

17 MS. McNEAL: No. But it wouldn't be too hard to
18 do. We could take a look at that.

19 CHAIRPERSON MULÉ: Thank you.

20 Are there any other questions from the Committee
21 members?

22 COMMITTEE MEMBER MARIN: Madam Chair, I don't
23 know whether all of the people that spoke here today plan
24 on being here at the next meeting, which will be the Board
25 meeting. And I want you to know that all of your comments

1 have been duly recorded by our reporter here.

2 You're certainly welcome to come again so that
3 the Board listens to it. Traditionally your hearing is
4 held at the Committee level to limit, if you will, the
5 discussion at the Board level. But, you know, certainly
6 everybody would be welcome.

7 And I do want to acknowledge a couple of things,
8 Madam Chair, if I may.

9 I think it's very important. I mean I made a
10 joke at the very beginning when I said, "Is this
11 controversial? Was this controversial?" I know it has
12 been and it must be. We take this very, very seriously.
13 Our staff has taken an inordinate amount of time planning
14 for this meeting and for the next Board meeting.

15 I want to thank the proponents of the item
16 because they graciously agreed to postpone their requests
17 for permit until after the voters had spoken.

18 You must understand that this Board could have
19 taken a look at this permit four months ago, five months
20 ago. So I do have to acknowledge that the voters have
21 spoken. And, quite frankly, I can appreciate the
22 disillusionment, if you will, from the people that opposed
23 this project from the get-go. I acknowledge that. I
24 appreciate that.

25 I know people feel very strongly that maybe the

1 voters were bamboozled into this particular proposition.
2 And that has been said also about the initiative process,
3 even for our current Governor. You know, the Governor was
4 elected by initiative, our current Governor. And I'm sure
5 there were people that were very disappointed with that
6 outcome. The majority of Californians spoke.

7 And while I can appreciate -- in a way I feel
8 that, you know, this was a very significant political
9 campaign waged bravely by both sides. And the voters have
10 spoken. And I know that it would have been easier for all
11 of us, believe me, it would have been a lot easier for all
12 of us to have this project be done the same way that all
13 other permits have come. But I think to negate or deny
14 twice what the voters in that area at the local level have
15 said, I think it places this Board in a very unusual
16 situation.

17 And so I appreciate all of the concerns from the
18 opponents. I would hope that the proponents have listened
19 to them. I know that they have because they've been
20 listening to that over the last ten years.

21 I believe -- and I spoke to both the proponents
22 and the opponents when we were doing our research five
23 months ago. I asked if there was any -- under any
24 circumstances -- I asked this of the Pala and the River
25 Watch people when I met with them -- if there was any

1 particular situation under which this permit could be
2 granted in their eyes. And they basically said, "There is
3 no way. We totally are opposed to it."

4 There had been enormous strides made. And I
5 think staff has diligently worked with the LEA. The fact
6 that there are no technical or regulatory issues by our
7 own Board staff I think speaks volumes to the amount of
8 work that this Board has already done and -- I mean the
9 Board staff.

10 So with that, Madam Chair -- I know we're going
11 to have this again at the Board meeting -- but it seems to
12 me that a lot of work has already been done and now it's
13 for the Board to decide.

14 CHAIRPERSON MULÉ: Thank you, Ms. Marin.

15 Do you have any other comments, Mr. Paparian?

16 COMMITTEE MEMBER PAPARIAN: No. I mean I think
17 there's -- there are some -- a number of unanswered
18 questions that I've had that I'm going to appreciate
19 getting the answers to over the next few days.

20 CHAIRPERSON MULÉ: So it seems to me that, given
21 the fact that we have a number of unresolved issues and
22 we've got a number of things that staff needs to get back
23 to us, do I take it that we all agree to move this forward
24 to the full Board without any recommendation?

25 COMMITTEE MEMBER MARIN: If that's your pleasure.

1 I would ask for recommendation. But that's okay, Madam

2 Chair. I'll --

3 CHAIRPERSON MULÉ: That's what I'm asking.

4 COMMITTEE MEMBER MARIN: I will go with whatever
5 you think.

6 CHAIRPERSON MULÉ: I'm asking what the pleasure
7 of the Committee is.

8 COMMITTEE MEMBER PAPARIAN: Yeah, I'd prefer to
9 get some of the additional information. But I'm one
10 member here.

11 COMMITTEE MEMBER MARIN: So am I.

12 CHAIRPERSON MULÉ: Would you like to make a
13 recommendation?

14 COMMITTEE MEMBER MARIN: Well, you know, I --
15 one of the things that we try to have in committees is to
16 advance it at least with a recommendation it's going to be
17 heard completely at the Board level.

18 I would move for a recommendation. But I don't
19 want to overstep my authority as well.

20 CHAIRPERSON MULÉ: You're free to make a
21 recommendation if you want.

22 COMMITTEE MEMBER MARIN: Well, I will move that
23 we advance this to the Board for recommendation of
24 approval, that I don't see a reason to deny this permit.

25 CHAIRPERSON MULÉ: Okay. So we have a motion

1 and --

2 COMMITTEE MEMBER PAPARIAN: I can't second that.
3 I feel that there's a number of CEQA-related issues that
4 we don't have the answers to that we need to in order to
5 understand enough to be able to vote on the statement of
6 overriding considerations.

7 CHAIRPERSON MULÉ: So we do not have a second
8 then.

9 COMMITTEE MEMBER MARIN: Unless you second it.

10 (Laughter.)

11 CHAIRPERSON MULÉ: Okay. I tend to agree with
12 Mr. Paparian. I think there -- I would normally say let's
13 move it forward with a recommendation to approve. But I
14 personally feel that we do have a number of unresolved
15 issues that staff needs to get back to us with. And once
16 we have those issues resolved, hopefully at the Board
17 meeting we can then hear this before the full Board and go
18 from there.

19 COMMITTEE MEMBER MARIN: With that, I then --
20 what do you call it? -- withdraw my motion.

21 CHAIRPERSON MULÉ: Thank you.

22 Okay. Are there any other comments or questions?

23 With that, I'd like to adjourn the meeting.

24 Pardon me?

25 Oh, any further public comment?

1 No.

2 With that, I'd like to adjourn the meeting.

3 Thank you very much.

4 (Thereupon the California Integrated Waste

5 Management Board, Permitting and Enforcement

6 Committee meeting adjourned at 2:30 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California Integrated Waste Management Board,
7 Permitting and Enforcement Committee meeting was reported
8 in shorthand by me, James F. Peters, a Certified Shorthand
9 Reporter of the State of California, and thereafter
10 transcribed into typewriting.

11 I further certify that I am not of counsel or
12 attorney for any of the parties to said meeting nor in any
13 way interested in the outcome of said meeting.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 16th day of December, 2004.

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23 JAMES F. PETERS, CSR, RPR

24 Certified Shorthand Reporter

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